D.O. 116/6

Dominions
(South African)
No. 6

Confidential

Part I

Basutoland, the Bechuanaland Protectorate, and Swaziland

(*a*) Transfer to the Union of South Africa
(*b*) General

Correspondence and Papers
[1934–1936]

Part II

Southern Rhodesia

Correspondence and Papers
[1934–1936]

[*Part I is in continuation of Dominions (South African) No. 5. Continued by Dominions (South African) No. 7.*]

[*Part II is in continuation of Dominions No. 117. Continued by Dominions (South African) No. 7.*]

6

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PART I

CORRESPONDENCE

1934–36

relating to

BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND

(C 28614) A*1

PART I

Correspondence

1934 — 1936

relating to

BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND

(A)

TRANSFER OF THE HIGH COMMISSION TERRITORIES TO THE UNION OF SOUTH AFRICA

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10991/108. No. 1.

GENERAL J. B. M. HERTZOG (PRIME MINISTER, UNION OF SOUTH AFRICA)

to

MR. J. H. THOMAS (SECRETARY OF STATE FOR DOMINION AFFAIRS).

[Answered by No. 6.]

Prime Minister's Office, Cape Town,
25th April, 1934.

MY DEAR THOMAS,

It was with a feeling of disappointment that I read your letter of the 27th November last* in which you state that you and your colleagues feel that the present is not a suitable time for raising the question of the transfer to the Union of the Government of Basutoland, of the Bechuanaland Protectorate, and of Swaziland. I had confidently hoped for a more reassuring response.

As the matter is almost daily becoming more pressing and acute you will, I hope, forgive me if I find it necessary to place my views before you once more with complete frankness. Failure to do so, while it might contribute to the encouragement of a continuation of possibly erroneous conceptions of the true position among responsible statesmen in England, might, I fear, otherwise prove very detrimental to the interests of the Union no less than to those of the territories concerned.

It is my firm conviction, that the attitude adopted by His Majesty's Government in England with regard to this question, as appears from your letter, cannot be continued much longer without creating a very unfavourable state of feeling in this country, which is already becoming more and more insistent.

The position to-day, with respect to these territories, is very unsatisfactory, and I and my colleagues fear that, if the present position be allowed to continue much longer, the relationship between the Union and the territories and their respective inhabitants will more and more assume a less friendly aspect and give rise to feelings of hostility which may permanently affect their relationship, to the detriment of all concerned.

Quite frankly, the position of the Union with respect to these territories, whether viewed from the economic, administrative, or judicial aspect, is, for reasons *inter alia* set out below, fast becoming intolerable.

As His Majesty's Government in the United Kingdom are aware, while the agricultural well-being of the Union is a matter of the very gravest concern to its people, the Union is constantly afflicted by the visitation of agricultural pests and diseases which can be combated only by the unintermittent exercise of administrative alertness, energy, and skill, and at the cost of huge sums of money, sometimes amounting to hundreds of thousands of pounds. Within its own borders the Union administration can cope, as it has in the past coped, successfully with these pests and diseases, such as scab, East Coast fever, foot-and-mouth disease, locusts, etc. From time to time, however, there have been recurrences of certain of these diseases and pests which have initiated not within the borders of the Union, but within the native territories here under consideration, and which, it is felt, would either not have occurred at all, or would have been successfully suppressed at an early stage if these territories had been under the administration of the Union.

The present campaign which is being waged against the invading locust swarms, affords typical illustrations of what has been experienced in the past and has to be expected by the Union and its people as long as the present position in respect to the native territories is allowed to continue. The Union administration has so far coped successfully with this very severe infestation within its own borders. But all its efforts and all the expense must practically be fruitless unless an equally determined campaign is also carried on in the infested native territories.

Unfortunately, however, this has so far not always been the case. Difference of opinion as to methods of procedure and as to other matters bearing on the problem of extermination, has to a very large extent served to increase the difficulties with which the Union has had to struggle in its attempt to destroy the invading swarms, and has been responsible for much of the loss suffered through the destruction of crops in the Union. What has taken place in Swaziland may be here cited in illustration. As late as the 16th of February last the locust situation in Swaziland was reported upon as quite satisfactory. Within 10 days after, however, the Union Department of Agriculture was informed that swarms of hoppers which would reach the flying stage in 10 or 12 days, were crossing the Swaziland border into Union territory. Thereafter the position in Swaziland grew from bad to worse and eventually got out of hand

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* No. 17 in Dominion (South African) No. 5.

with results which at one time promised disaster to sugar planters in Natal and to farmers in Eastern Transvaal. While officials differed and territorial susceptibilities had to be observed, the locust had been given a holiday!

What has just happened in the case of the locust campaign, is, however, no more than a repetition of what has before occurred in the case of the eradication of foot-and-mouth disease, East Coast fever, scab, and other diseases and pests, and as long as the present position of the territories is maintained, such evil happenings will of necessity repeat themselves.

Geographically the territories concerned form as it were integral portions of the Union, and unless in matters and times of emergency and urgent necessity affecting farming operations the closest co-operation is observed and a uniform policy applied under common control, the interests of the native territories no less than those of the Union will be exposed to the greatest hazard.

From the point of view of the Union the above considerations alone, appear sufficiently important to call for an immediate and serious attempt to deal with the question of the transfer of the government of the territories as contemplated by the Legislature in 1909. There are, however, other no less weighty and pressing considerations to which I feel attention should be called.

The present position, for instance, with regard to the application of Part II of the Fugitive Offenders Act, and supplemental legislation, whereby Union inhabitants along the Bechuanaland border are compelled to appear before Protectorate Courts in sparsely populated districts, where travelling is difficult, to answer or to give evidence concerning charges which in the result often appear trivial, and frequently cannot be substantiated, is most unsatisfactory and has already given rise to very serious dissatisfaction amongst the European farmers of the Union. Already on several occasions of late representations have been made to the Government here against Union citizens being compelled to appear before those Courts as witnesses, at great cost and personal discomfort; and insisting that the extradition of Union citizens to the Protectorate shall only take place subject to the procedure and safeguards obtaining internationally, and I fear that unless a change be effected either in the administration of the Protectorate by a transfer to the Union, or by a revision of the terms of the existing Agreement, conflict between natives of the territory and whites along the border in the Union will become more and more difficult to avoid. There are other related questions of peace and good government, upon which, however, it is not my intention to detain you here.

The entry of natives from the Protectorates into the Union in search of employment is, however, another and more urgent matter requiring special mention once more because of the very great importance which it is fast assuming in the economy of the Union and the very unpleasant problems to which it is bound soon to give rise unless an early transfer of the government of these territories takes place. From 10,000 Basutos who until recently found employment in the Union, the number has increased to 35,000 owing largely to a policy of the very utmost friendliness and consideration advisedly pursued by the Union up to the present as against these territories and their inhabitants, often at the cost of its own citizens. The exigencies, however, of the preservation of good order, and of efficient administration, no less than the economic conditions and requirements of Union natives and Europeans, are now demanding that the present policy shall in various respects be revised.

At present, for instance, the vast majority of natives from the territories employed in the Union are, strictly speaking, prohibited immigrants, while, at the same time, they are ousting Union workers from the employment market. This is an anomalous position which in the past could be defended upon the ground that these territories were destined soon to be handed over for administration by the Union. As this promised transfer is now felt to be overdue, strong adverse comment is making itself felt; and soon the Government here will be compelled to take action, unless some definite assurance can be given by your Government that transfer will be effected within a reasonable time.

A similar position obtains in regard to the privileges enjoyed by the inhabitants of the territories—natives and Europeans—with respect to their products in the markets of the Union. Their competition is sometimes, as in the case of livestock, tobacco, dairy products, etc., felt to such an extent by the Union producers that complaints and protests are not seldom heard both in and outside Parliament, and no satisfactory answer can be made as long as these territories remain in their present position of total independence of the Union.

It can, therefore, be foreseen that if these territories are still for any length of time to remain outside the administrative control of the Union, it will become increasingly difficult, if not impossible, for the Government of the Union to continue to extend to their inhabitants the enjoyment of the rights and privileges of citizens in the labour and other markets of the Union.

You will, therefore, pardon me if finally I once more draw your attention to the provisions of section 151 of the South Africa Act, 1909, which clearly contemplates the step which it is now desired by me and my colleagues should be taken. The present time seems to us to be most opportune and the position as it exists at present cannot be allowed to continue much longer.

You will, I am sure, realize that it is not intended by me to cast any aspersions on the manner in which the territories are being administered. On the contrary, I have no fault whatsoever to find with their administration as such; and whatever the cause may be of the unsatisfactory state of things which here and there has given rise to comments by me, it must not be sought in the administration, but in the peculiar circumstances and conditions whereunder the administration has been, and necessarily must be, carried on.

I confidently hope, therefore, that you and your colleagues will reconsider the decision which you have communicated to me, leaving it to the Union to give such safeguards in respect of the matters which may cause concern to you as will be conducive to a satisfactory conclusion of the question.

Since writing the above I have had a conversation with Lord Clarendon who informs me that when he was in England last December you asked him to inform me, when the occasion offers, that although you have not been able to visit us this year, as was hoped, you still contemplate doing so next year when you will go into the question of the territories and their transfer. I need hardly tell you that your visit will be much welcomed and appreciated as an earnest endeavour on the part of the British Government to meet the just claim and wishes of the Union.

Yours, &c.,

J. B. M. HERTZOG.

10991/114.

No. 2.

TELEGRAM

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 7.30 p.m., 22nd May, 1934.)

No. 78. 22nd May. According to Press report Hon. John Stuart was received by the Prime Minister yesterday and presented a petition stated to be signed by 98 per cent. of the white inhabitants of the European blocks of the Bechuanaland Protectorate asking for incorporation of those blocks in the Union. He was introduced by Bain-Marais, M.P. for Boksburg North, and du Plessis, M.P. for Bechuanaland.

General Hertzog is reported to have remarked on the opportune presentation of the petition and to have said that action would have to be taken. He was sure that difficulties on both sides would be overcome. He added that the petitioners had asked only for incorporation of the white settlements whereas he felt that the whole Protectorate should come within the Union. He had already written to that effect to the Dominions Office in London and Mr. Stuart's mission would be very helpful.

I have received from the Resident Commissioner Bechuanaland Protectorate copy of the petition which was forwarded to him by Stuart " for his information " stating that he had arranged to present it to the Prime Minister of the Union of South Africa.

Following is summary of the petition which is addressed formally to Hertzog from the European inhabitants of Lobatsi Gaberones and Tuli Block settlements of the Bechuanaland Protectorate: object of the petition is to enlist the sympathy, good offices, and active assistance of the Prime Minister and the Government of the Union; sympathy with the hardships and difficult position; good offices in approaching His Majesty the King with a view to incorporating of the settlements within the Union; active assistance by giving them some voice in control of their own destinies and an improved economic future.

Petitioners lot not easy as in addition to difficulties attending settlement in a new country it is complicated by intimate contact with primitive native races. They think that incompatibility of their ideals as civilized communities in such a position has produced problems which their present Government cannot solve. All great questions raised by the clash of colour, political rights of small communities and prestige of Europeans are involved in their cases.

Petitioners do not dispute great, even paramount, native interests in the rest of the country but submit that the three blocks which they inhabit should be separated politically and economically from the rest of the Protectorate and be governed by an Administration suitable for Europeans.

The Protectorate Administration has failed to meet their legitimate wants and they are convinced that separation and separate development can alone give them justice and enable them to survive. They state that their position is quite distinct from natives as their land is their own and is intended for permanent white settlement. Separation can be effected without infringing any undertaking given to the natives and without compromising the future of the white inhabitants of the other parts of the country and would relieve the local Administration of inconvenient problem.

Aim of petitioners is to secure severance of the settlements from the Territory and to link up with the white community of the Union in order to expand and develop in accordance with European standards and culture. They refer to the petition put forward eight years ago with the same object which was rejected.

Petition proceeds that the only market is within the Union borders and practically all wants supplied by Union industries and merchants. As a small community to a large Dominion petitioners appeal to the Prime Minister for help and ask him to represent their parlous plight to His Majesty the King with assurance that the Union is prepared to accept responsibility for their future.

Text of petition extracted from yesterday's evening newspaper was sent to Tait by air mail due 31st May.

Although my personal relations with Stuart have never been anything but friendly he has on this occasion entirely ignored me and not even troubled to write his name in the book at my office, which is only a few yards from Parliament and Prime Minister's Offices. This might perhaps be borne in mind in view of the following statement ascribed to him in interview with the *Cape Times* " he felt that his mission to England to present the petition to Mr. Thomas, the Dominion Secretary, would be furthering the desire of the Union as much as the desire of the petitioners ".

10991/117. No. 3.

TELEGRAM

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 1.20 p.m. 23rd May, 1934.)

[*Answered by No. 4.*]

No. 81. 23rd May. With reference to my telegram No. 78, 22nd May*. It is I think my duty not on personal grounds to call your attention to the Prime Minister's action in receiving officially Stuart and petition of white inhabitants of the Bechuanaland Protectorate without in any way consulting or communicating with me. This appears to me inexplicably discourteous to the Office which I hold as representative of His Majesty in that Territory. Moreover, since the petition and the discussion with Stuart concerned matters which are of direct interest to His Majesty's Government in the United Kingdom, I think it reasonable for me to have expected to have been given in my other capacity as representative of that Government some information otherwise than merely through a report in the Press.

It is easy to surmise what would have been said in the Union if the Prime Minister of the United Kingdom had received a deputation from, e.g., malcontent Natalians petitioning for assistance in severing their Province from the Union, without in any way communicating with the Union Government or its High Commissioner in London. You will doubtless consider whether such treatment of holder of my two Offices should be allowed to pass *sub-silentio*. Press reports say that General Hertzog told Stuart that he had written to the Dominions Office but I have received no intimation to that effect.

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* No. 2.

10991/117. No. 4.

TELEGRAM

to

HIGH COMMISSIONER, SOUTH AFRICA.

(Sent 2.55 p.m., 29th May, 1934.)

[*Answered by No. 5.*]

No. 60. Reference your telegram No. 81 of 23rd May*. I agree that the matter cannot be passed over in silence. At the same time, however, I am most anxious not to create unnecessary friction. In the circumstances I should be glad if you would take up the matter with General Hertzog, reminding him of the remonstrance made by Lord Athlone in similar circumstances—see Lord Athlone's telegram of 14th December, 1924, No. 22 in Dominions (South Africa) No. 1. Your representations should be informal but it should be made clear that you are making them at my request.

With regard to the last sentence of your telegram General Hertzog may have been referring to his letter to me of 25th April regarding the general question of the transfer of the High Commission Territories—see your telegram of 7th May Secret and Personal†.

10991/127. No. 5.

TELEGRAM

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 6.5 p.m., 1st June, 1934.)

No. 87. 1st June. Your telegram No. 60, 29th May‡. As a result of an informal talk the Prime Minister has told me and authorized me to tell you that he had intended no discourtesy whatever either to me or to the United Kingdom Government and that he was sorry that anything had occurred from which any such impression could have arisen. He thought at the time when he agreed to see him that Stuart had come for an ordinary conversation; he had not gathered that Stuart regarded himself as a deputation; he did not know that the presentation of a petition was intended until it was actually made; he had neither made nor authorized the subsequent report in the Press. The matter I think neither need nor can be carried further.

10991/145. No. 6.

MR. J. H. THOMAS (SECRETARY OF STATE FOR DOMINION AFFAIRS)

to

GENERAL J. B. M. HERTZOG (PRIME MINISTER, UNION OF SOUTH AFRICA).

MY DEAR HERTZOG, Downing Street, 16th July, 1934.

I thank you for your letter of the 25th April§ on the question of the transfer of Basutoland, the Bechuanaland Protectorate, and Swaziland, to the Union of South Africa.

May I say at once how much I appreciate so full and frank a statement of your views on this matter? I entirely agree that it is highly desirable that there should be no misunderstanding as to the true position. It is from this point of view, and in no controversial spirit, that I should like to discuss the various difficulties which you mention in your letter.

In the first place you say that, while the Union can cope successfully within its own borders with the various agricultural pests and diseases by which it is constantly afflicted, " from time to time, however, there have been recurrences of certain of these pests and

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* No. 3. † 10991/100: not printed. ‡ No. 4. § No. 1.

diseases which have initiated not within the borders of the Union, but within the native territories here under consideration, and which, it is felt, would either not have occurred at all, or would have been successfully suppressed at an early stage if these territories had been under the administration of the Union." You cite as a typical illustration of this the recent campaign against the red locust.

I am sure that you do not intend to suggest that the invasion of parts of the Union by the red locust either originated in, or could have been prevented by these territories. As Kemp pointed out in the Union Parliament on the 29th January, the crux of the problem presented by the red locust is that it is not indigenous to South Africa but comes from Central Africa, and that its permanent breeding grounds lie somewhere north of the Zambesi instead of, as in the case of the brown locust, in relatively accessible parts of the Union and the Bechuanaland Protectorate. Moreover, owing to the great distances which the migrating swarms can cross without intermediate breeding, and the enormous area infested, it is clear that Swaziland and the Bechuanaland Protectorate could not constitute barriers against the swarms formed in neighbouring territories and that no measures taken in them can protect the Union from the danger of invasion or even diminish it to an appreciable extent.

I assume then that the suggestion is not that this invasion could have been prevented by the territories, but that the existing administrative position added to the difficulty and expense of suppressing it in the Union. As to this you are, of course, aware that last December, as soon as the gravity of the situation became apparent, the Union were asked whether they would again be willing to assume the direction, as they had done in the past, of any anti-locust operations that it might be thought advisable to undertake in Swaziland and the Bechuanaland Protectorate, with, of course, all possible assistance from the local Administrations. In the Bechuanaland Protectorate the Union agreed to take over the direction of the campaign, which was accordingly conducted, on the same scale and lines as in the Union, by Union officers with the co-operation of the local Administration, to the whole-hearted character of which I am glad to see that the Union officer in charge paid a tribute on the conclusion of the campaign. You will also recollect that, though the Government here were advised that a campaign on this scale was neither necessary from the point of view of the interests of the Protectorate nor likely to be successful, we agreed as good neighbours to bear a share of the cost of operations which the Union considered to be necessary in their own interests. In the circumstances I think you will agree that, so far as the Bechuanaland Protectorate is concerned, the existing administrative position cannot be said to have increased the Union's difficulty of dealing with the red locust, while it has substantially reduced their expenses.

In Swaziland, unlike the Bechuanaland Protectorate, the Union did not intimate any willingness to undertake responsibility for the campaign, which was accordingly carried out by the local Administration. This, however, does not affect my point, which is that, had the Union Government desired to assume the direction of operations in Swaziland in the same way as they did on this occasion in the Bechuanaland Protectorate and in the past in both these Territories, the local Administration would have co-operated to the utmost of their power with the Union authorities.

In view of this I do not think that any useful purpose would be served by discussing the relative degree of success achieved by the Swaziland campaign against the red locust. I feel bound, however, to say that my information does not confirm that owing to differences between officials and territorial susceptibilities the locust was given a holiday there. On the contrary, I understand that, at the invitation of the local Administration, the Chief Locust Officer of the Union visited Swaziland towards the end of February to advise on the position there and that he then expressed satisfaction both at the scale of the operations and at the methods adopted. I am assured that after this visit there was no relaxation of efforts and that the local Administration, with the strenuous assistance of the white and native population, did everything that was humanly possible to cope with a pest in whose suppression they were vitally interested. It is not, of course, claimed, that the campaign was successful in extirpating all the hoppers that hatch out on uncultivated lands and mountains, an achievement which the Union authorities have themselves publicly stated, with reference to the position in the Union, to be impossible. I am, however, assured that, so far as exports and imports of this undesirable commodity are concerned, the Union balance of trade with Swaziland was what is known as a favourable one!

I propose to follow your example in not entering into detail into this question so far as it relates to the control of other agricultural pests and diseases, though I may observe that the experience of the last twenty-five years shows that the administration of these territories have not been unsuccessful in dealing with such matters. For example, I believe that I am correct in saying that East Coast fever has been controlled in Swaziland as effectively as in the Transvaal; sheep scab has been adequately dealt with in

Basutoland; lung sickness has been eradicated from the Bechuanaland Protectorate; and the recent outbreak of foot-and-mouth disease in the Protectorate did not originate there and was promptly and energetically met by the inoculation of some three-quarters of a million cattle in the infected area within a period of nine months. But what I am most concerned to emphasize is that, so far as I can see, there is no reason why the closest co-operation and completest uniformity of aims and methods, which the recent locust campaign has shown to be not incompatible with the present position of the territories, should not be practicable throughout this important sphere of common interests.

I now come to the second of the questions raised in your letter, namely the fugitive offenders procedure in relation to the Bechuanaland Protectorate. I was aware that certain difficulties had arisen a year or so ago in connexion with this matter, but I was under the impression that they had been adjusted to the satisfaction of the appropriate authorities in the Union, who expressed appreciation at the time of the action taken to meet them in this matter. I gathered that the Union authorities were not anxious to alter the existing arrangements for dealing with fugitive offenders so far as the Union and neighbouring territories were concerned, but that they were naturally concerned to ensure that summonses or warrants of apprehension should only be issued against inhabitants of the Union where a *prima facie* case could be established and where the available evidence was such as to afford a reasonable prospect of a conviction. I need hardly say that the last thing that we wish is that the procedure should be used in any vexatious manner and you may be assured that the Protectorate authorities are thoroughly seized of the importance of bearing the above considerations in mind. In point of fact, so far as I am aware, no further trouble has since occurred in connexion with this matter.

The third question raised in your letter relates to the entry of natives from these territories into the Union in search of employment in the mines or elsewhere. On this you write that " from 10,000 Basutos who until recently found employment in the Union, the number has increased to 35,000 owing largely to a policy of the utmost friendliness and consideration advisedly pursued by the Union up to the present as against these territories and their inhabitants, often at the cost of its own citizens." As to this, the figures of passes issued to Basutos for employment in the mining areas, to which I assume your own refer, do not seem to show any marked increase of recent years. Thus in 1926 they showed 34,500 issued for the mines, besides 60,000 issued for other forms of employment outside the territory; and that this state of affairs was even then not a recent development is shown by the fact that in 1908, 78,000 Basutos left the territory to seek work. It seems also relevant to point out that the number of natives recruited for the mines from Portuguese territories exceeds the total number of natives from the High Commission Territories employed in a similar capacity; that the Inter-Departmental Committee on the Labour Resources in the Union in 1930 (quoted in the Official Union Year Book), referring to " the chronic shortage of native labour for the gold mines ", stated that except for a short period in 1924 there had not been an adequate labour supply for many years; and that the Union Government have recently decided to relax, as an experiment, the prohibition on the employment in the mines of natives from north of latitude 22° south. I agree that this phenomenon, which appears to be the result of the operation of the demand for labour in the Union on the supply available in neighbouring territories, raises serious problems from the point of view of its effects both on the internal economy of the Union and on the social structure of the territories. Here again it seems to me that the solution to these problems lies in close co-operation, and the joint working out of a policy which will take into account all the complete considerations involved. But I cannot see how it would be furthered by transfer, which in itself would merely mean that under Section 18 of the schedule to the South Africa Act the Union would be debarred from imposing any discriminatory restriction whatever upon the entry of natives from the territories into the Union.

Finally there is the question of the importation of products from the territories into the Union, as to which you say that no satisfactory answer can, under existing conditions, be made to complaints by Union producers that they are suffering from the competition of producers in the territories. Surely, however, this does not take into account the advantages derived by the Union as well as by the territories from the free interchange of products provided for by the Customs Agreement. That the market of the territories is of some quite appreciable value to the Union will, I think, be conceded; and in view of the fact that the territories draw the bulk of their imports from the Union it seems to follow that any curtailment of their exports, by reducing a purchasing power which is chiefly expended in the Union, must in the end be paid for by the Union in the form of diminished purchases of Union products. I appreciate, of course, the desire of the Union to protect their markets from being flooded, particularly by cattle of inferior quality. But you will no doubt agree that under Section 17

of the schedule to the South Africa Act transfer would necessarily involve the removal of even the present restrictions on the admission of cattle from the territories. In the circumstances does not the remedy really lie on the lines recommended in the report of the Fiscal Conference between representatives of the Union and the territories at Cape Town in May, 1932, that is to say by the working out and introduction of a scheme of orderly marketing and regulation of supplies?

I have endeavoured to show why, as stated in my letter of the 27th November*, I feel that the various difficulties which you have mentioned are not insuperable. In each case their solution seems to me to lie, as indeed you yourself have suggested, in the closest association and co-operation between the Union Government and the Territories' Administrations. I am convinced that it is on such lines that, in the long run, lies the solution of the larger problem, to which I now turn, that of the future of the territories in relation to the Union.

In my previous letter I said that my colleagues and I, after fully discussing the position, felt that the present was not a suitable time for raising the question of transfer with the native population of the territories with a view to the submission of the matter to Parliament here, in accordance with pledges given by successive Governments. Our attitude to the question of consultation with the inhabitants cannot be better stated than in the words of Mr. Amery's despatch of the 4th December, 1925†, of which a copy was handed to you at the time by Lord Athlone. Mr. Amery in discussing the question of the transfer of Swaziland then wrote, *inter alia*:—

> "His Majesty's Government are bound by pledges which they have made to submit the Union Government's proposals to the European and native inhabitants of the territory. It will be readily appreciated that the greatest prudence would have to be observed in selecting the right moment to consult the inhabitants of the territory and in framing the proposals to be submitted to them, since if the reception accorded the proposals were such as to render it necessary to withdraw the application, it would be hardly possible to revive the question for some years to come."

Mr. Amery added:

> "I think also that General Hertzog will agree, in view of his statement in the Union Parliament on the 25th March, that it will be desirable that the consultation with the inhabitants should take place before any formal steps are taken in the Union Parliament."

The reference in the last words was to your statement, in reply to a question in the Union Parliament, in which you said, *inter alia*, as regards the question of the transfer of the Bechuanaland Protectorate, that if the people of the Protectorate, natives as well as Europeans, did not desire to come into the Union, you were "not prepared to have them incorporated into the Union." As regards Swaziland you stated:—

> "But in Swaziland, too, as I have said, I have taken up the position that unless the people are prepared and desire to come in I am not going to insist on their coming in."

The present position as we see it is this:

All our information goes to show that the result of consultation with the inhabitants of the territories with regard to transfer would, at least so far as the natives are concerned, not be likely to be such as to enable transfer, on the basis of your above declarations, and of our pledges both in Parliament and to the inhabitants of the territories, to be proceeded with. Such a situation would, it seemed and still seems to *us*, be embarrassing and undesirable from every point of view. It was on this ground that we arrived at the conclusion that the moment was not an opportune one for raising this question. This is still our view, but I would repeat that we should welcome the closest association and co-operation, particularly on economic matters, on the lines indicated in this letter.

As regards the last paragraph of your letter the prospects of my being able to visit South Africa in the near future are, I fear, still doubtful, but in any case we are looking forward to seeing you over here for the celebration of the 25th anniversary of the King's Accession. I need hardly say that I shall be very glad to discuss the whole question further with you then.

Yours, &c.,
J. H. THOMAS.

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* No. 17 in Dominions (South African) No. 5. † No. 50 in Dominions (South African) No. 1.

10391 151.

No. 7.

DESPATCH
from
HIGH COMMISSIONER, SOUTH AFRICA.

(Received 16th July, 1934.)

(Basutoland.)
(No. 522.)

High Commissioner's Office, Cape Town,
27th June, 1934.

SIR,

I have the honour to transmit herewith, for your information, a copy of a despatch from the Resident Commissioner at Maseru forwarding a letter which has been addressed to me by the Paramount Chief of Basutoland relative to the question of the transfer of the Administration of Basutoland to the Union.

2. I attach also a copy of my reply. You will see that I have asked the Resident Commissioner to communicate to Griffith a copy of certain statements which have been made in the Parliament of the United Kingdom, and particularly Lord Strathcona's statement in the House of Lords on the 26th July, 1933.

I have, &c.,
H. J. STANLEY,
High Commissioner.

Enclosure 1 in No. 7.

(Basutoland.)
(No. 820.)

Resident Commissioner's Office,
Maseru, Basutoland, 19th June, 1934.

SIR,

With reference to Your Excellency's despatch No. 1586 of the 13th June regarding the question raised recently on the subject of the transfer of the High Commission Territories to the Union of South Africa, I have the honour to transmit for Your Excellency's consideration, a copy of a letter which I have received from the Paramount Chief and which he has requested me to transmit to Your Excellency.

2. I had previously advised the Paramount Chief in reply to an inquiry received from him that, in so far as I was then aware, I had no official information on the subject.

I have, &c.,
J. C. R. STURROCK,
Resident Commissioner.

His Excellency
Sir Herbert J. Stanley, G.C.M.G.,
High Commissioner for South Africa.

Office of the Paramount Chief,
Matsieng, Basutoland, 5th June, 1934.

I greet Your Excellency.

YOUR EXCELLENCY,

I have the honour to state that I have heard a great rumour about the incorporation of the High Commission Territories within the Union, and this rumour Your Excellency has disturbed my feelings very much.

I respectfully request Your Excellency, therefore, to be kind enough to let me know, as you know all things even those that have not yet happened, what you may have heard about the matter.

I shall be grateful to receive your Excellency's kind reply on this subject.

With greetings,
Your friend,
N. GRIFFITH LEROTHOLI,
Paramount Chief.

To
His Excellency Sir Herbert Stanley,
High Commissioner.

Enclosure 2 in No. 7.

(Basutoland.)

(No. 1756.) High Commissioner's Office, Cape Town,
27th June, 1934.

SIR,

I have the honour to acknowledge the receipt of your despatch No. 820 of the 19th June, forwarding a copy of a letter addressed to me by the Paramount Chief regarding the question of the transfer of the administration of the High Commission Territories to the Union of South Africa.

I shall be obliged if you will inform the Paramount Chief that I have received his letter and that I am forwarding a copy of it to the Secretary of State. In reply to his inquiry as to what I may have heard about the matter, I shall be glad if you will send him a copy of the following statements which have been made in the Parliament of the United Kingdom, viz.:—

(1) Statement in the House of Lords by Lord Strathcona on the 26th July, 1933, and by Mr. Thomas in the House of Commons on the following day. Copy attached.

(2) Extracts from the Official Report of the House of Commons of the 30th April, and 1st May (2) and 7th May (see the Secretary of State's despatches No. 160 of the 3rd May and No. 164 of the 8th May, enclosed in my despatch No. 1531 of the 13th June).

(3) Extract from the Official Report of the House of Commons of the 29th May (see the Secretary of State's despatch No. 202 of the 1st June enclosed in my despatch No. 1685 of the 19th June).

In communicating these extracts to the Paramount Chief you might draw his attention particularly to the enclosed statement by Lord Strathcona in which it was re-affirmed that no decision in regard to the transfer of the High Commission Territories will be made by His Majesty's Government in the United Kingdom until the native population have had a full opportunity of expressing their views.

I have, &c.,

H. J. STANLEY,

High Commissioner.

His Honour
The Resident Commissioner of Basutoland.

10991/169. No. 8.

DESPATCH

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 30th August, 1934.)

(Basutoland.)

(No. 662.) High Commissioner's Office, Pretoria,
21st August, 1934.

SIR,

With reference to my despatch No. 522 of the 27th June*, I have the honour to transmit herewith a copy of a despatch from the Resident Commissioner of Basutoland enclosing a copy of a letter from the Paramount Chief in regard to the question of the transfer of the administration of Basutoland to the Government of the Union of South Africa.

2. In acknowledging the receipt of this despatch I am requesting the Resident Commissioner to inform Griffith that a copy of his letter has been forwarded to you.

I have, &c.,

H. J. STANLEY,

High Commissioner.

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* No. 7.

Enclosure in No. 8.

(Basutoland.)

(No. 820.) Resident Commissioner's Office,
Maseru, Basutoland, 20th August, 1934.

SIR,

With reference to Your Excellency's despatch No. 1756 of the 27th June, regarding a request by the Paramount Chief for information in regard to the question of the transfer of the Administration of the High Commission Territories to the Union of South Africa, I have the honour to inform Your Excellency that copies of the statements and extracts from official reports mentioned in the second paragraph of the despatch under reference were duly forwarded to the Paramount Chief as requested.

2. I have now received Griffith's acknowledgement of this correspondence—*vide* copy of his letter attached—which he has requested me to transmit to Your Excellency.

I have, &c.,

J. C. R. STURROCK,

Resident Commissioner.

His Excellency,
Sir Herbert J. Stanley, G.C.M.G.,
High Commissioner for South Africa.

Office of the Paramount Chief, Matsieng,
8th August, 1934.

I greet you Chief.

CHIEF,

I acknowledge the receipt of your letter No. 820 of the 6th July, enclosing copies from His Excellency the High Commissioner, of statements in the House of Lords and in the House of Commons and certain discussions concerning correspondence from the Union of South Africa relating to the incorporation of the Protectorates within the Union Government.

Chief, I thank you most sincerely for having been kind enough to refer my enquiry to His Excellency the High Commissioner; and I am grateful also for the kind reply of His Excellency the High Commissioner stating that he has forwarded my enquiry to His Majesty's Secretary of State.

Chief, as the rumour continues to be heard from various sources, I request you to be kind enough to immediately inform His Excellency that I and my small nation, with which I was left by the late Chief Moshoeshoe who placed himself under the benign government of His Majesty and his successors, do not want to be incorporated within the Union, and we do not consent to it.

Chief, I speak thus in spite of my having heard that the statements made by the honourable gentlemen who made speeches in the Houses referred to and the answers to correspondence, are good, but nevertheless I wish to place on record that this affair of incorporation within the Union Government is not consented to by me and my Basuto; and we do not like it, because Chief, under the good government of His Majesty the King we live in peace and great comfort being where the late Chief Moshoeshoe the wise placed himself.

I request you therefore Your Honour that you may forward these words of mine to His Excellency the High Commissioner.

With greetings,

Your friend,

N. GRIFFITH LEROTHOLI,

Paramount Chief.

The Resident Commissioner of Basutoland, Maseru.

10991/108. No. 9.

DOMINIONS OFFICE MEMORANDUM.

QUESTION OF TRANSFER OF BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND TO THE UNION OF SOUTH AFRICA.

(Confidential.)

1. Though Basutoland is entirely, and the Bechuanaland Protectorate and Swaziland are very nearly, surrounded by the territories of the Union, they are administered on behalf of His Majesty's Government in the United Kingdom by a High Commissioner.

2. Basutoland was declared British territory and placed under the administration of the High Commissioner for South Africa in 1868 at the request of Moshesh, a Chief of outstanding ability, whose object was to secure protection for his people against the Boers. In 1871 it was annexed to the Colony of the Cape of Good Hope but after thirteen years of constant discontent and disturbances, culminating in a general rising, it was returned, at the request of the Colony, and in accordance with the expressed wishes of the Basuto, to the administration of His Majesty's Government, acting through the High Commissioner for South Africa, since when there has been no recrudescence of trouble.

3. Bechuanaland was declared a Protectorate, under very similar circumstances, in 1885, the Chief primarily responsible being Khama, actuated by the same motive as Moshesh. In 1891 it was formally brought under the administration of the High Commissioner for South Africa.

4. Swaziland remained nominally independent till 1890, when the wholesale and overlapping concessions granted by a drunken native King necessitated some form of European control. From 1890 to 1894 the British and the Transvaal (then the South African Republican) Governments established a species of condominium which was replaced in 1894 by an arrangement under which the South African Republic was given powers of protection and administration without actual incorporation. After the Boer War the administration of Swaziland was transferred to the Governor of the Transvaal till 1907, when it was transferred to the High Commissioner for South Africa.

5. In 1909, when the constitution of the Union of South Africa came up for consideration, the natives of all three territories begged that they should not be handed over to the future South African Government. Asaurances were given them that no immediate change in their administration was contemplated, but provision for their eventual transfer was made in the South Africa Act, 1909, Clause 151 of which empowers the King in Council, on addresses from both Houses of the Union Parliament, to transfer the administration of these territories to the Union, subject to certain conditions, designed for the protection of native rights and interests, and embodied in the Schedule to the Act.

6. When the South Africa Bill was before Parliament, pledges were given by the Government that the House of Commons should have the fullest opportunity of discussing, and, if they wished, disapproving, any proposed transfer of these territories, and also that the wishes of the inhabitants would be ascertained and considered before any transfer took place. These pledges have been repeatedly reaffirmed by, or on behalf of, successive Secretaries of State, and an explicit undertaking has also been given that His Majesty's Government will not support in the House of Commons or elsewhere any proposal for transfer if it involves the impairment of the safeguards for native rights and interests which the Schedule to the South Africa Act was designed to secure*.

7. Since the passing of the South Africa Act the only change in the form of the administration of these Territories (apart from the alteration of the title of "High Commissioner for South Africa" to "High Commissioner for Basutoland, the Bechuanaland Protectorate, and Swaziland", which was effected in 1934 at the instance of the Union Government), has been the separation in 1930 of the Offices of Governor-General of the Union and High Commissioner, which hitherto had always been held jointly. As the Governor-General has now become solely the Representative of His Majesty in the Union, and the advice on which His Majesty acts in making the appointment is that of His Majesty's Ministers in the Union, it was considered impracticable that he should continue to be responsible to His Majesty's Government in the United Kingdom for the administration of Basutoland, the Bechuanaland Protectorate, and Swaziland. Sir Herbert Stanley, the first High Commissioner after the separation

* A summary of these pledges, &c., up to the end of 1925 is given in No. 50 in Dominions (South African) No. 1. Reference should also be made to the speech of Mr. Asquith, then Prime Minister, on the Second Reading of the South Africa Bill (Columns 1011 and 1012 of Hansard of 16th August, 1909).

of the two offices, was much impressed with the very lively satisfaction of the natives of these Territories at a change which they interpret as meaning that the King, in his relation to them, is now represented by an officer unconnected with and independent of the Union Government*.

8. The question of the transfer of these Territories has been informally raised by the Union Government on the following occasions:—

(i) In 1913 General Botha wrote personally to the High Commissioner to say that he considered that the Union must press for the transfer of Swaziland and the Bechuanaland Protectorate at the earliest possible moment. As regards the Bechuanaland Protectorate, the Secretary of State requested the High Commissioner to explain to General Botha that:—

> "His Majesty's Government could not in present circumstances regard favourably a request for a transfer of the administration of the Protectorate. He will, I trust, recognize that alike in history and in actual conditions the Protectorate differs greatly from Swaziland, and that it would be impossible in the near future to justify to Parliament a proposal for transferring the Protectorate. . . . Such a demand would in present circumstances be extremely embarrassing to His Majesty's Government. All existing indications point to strong opposition on the part of the Bechuanaland tribes and in face of their opposition (particularly that of Khama, with whom Mr. Chamberlain's settlement was made personally in 1895, and who has long been looked on in this country as the highest type of native chief), it would be quite impossible for His Majesty's Government to justify the transfer to the House of Commons, to which they have pledged themselves, in the debate on the South Africa Act, that it will have the opportunity of considering the matter before the transfer."†

As regards Swaziland, the attitude of His Majesty's Government at that date was as follows:—

> "Swaziland, which differs greatly both in history and in its present circumstances from the Bechuanaland Protectorate and Basutoland, contains a population of about 100,000 natives, who are not collected, as the Bechuana tribes mainly are, in large fixed reserves. Nor is the whole territory essentially a native territory as is Basutoland, for the Swazis at present live not only on their tribal lands, but also occupy land belonging to white owners, which forms some two-thirds of the whole area of the country, and owing to the promiscuous granting of concessions in the time of the late King Umbandine, is scattered throughout the territory. Although a great deal has been done in surveying and demarcating the land of white concessionnaires and the native areas, the process cannot be said to be complete, for under a Proclamation of 1908 no native actually resident on concessionnaires' land is to be compelled to move off for a period of five years from 1st July, 1909, and it seems in itself desirable, and would no doubt be expected by the native, that the time fixed for the division of the occupation of the country between the white landholders and the natives should have expired before any transfer of government takes place. These considerations must, therefore, defer the transfer until a date subsequent to the 1st of July, 1914.
>
> Subject, however, to the above observations, His Majesty's Government are not indisposed to consider an application for transfer."‡
>
> Owing to the outbreak of war the whole matter dropped.

(ii) In 1919 Generals Botha and Smuts, while in England, represented to Lord Milner that the time had come to transfer Swaziland to the Union. Their views on the transfer of the Territories generally were to the following effect:—

> "Although Basutoland will have to be taken over by the Union sooner or later, there does not appear to be any special urgency for the change at present. Indeed, there are some reasons to the contrary. But the transfer of Basutoland will have to be kept steadily in view, as a very awkward situation would arise in the event of any future trouble between Basutoland and the Union in case it should then still be under Imperial Administration.
>
> With regard to Bechuanaland, there is no special urgency for the transfer at present. But as soon as the inclusion of Rhodesia in the Union becomes a practical question, the transfer of Bechuanaland will have to be dealt with also.

* No. 1 in Dominions (South African) No. 5. † No. 3 in Dominions (South African) No. 1.
‡ No. 1. in Dominions (South African) No. 1.

There remains Swaziland, whose case is quite unlike the other two. Before the Boer War it was administered by the Transvaal Government. Since the Boer War the territory has been definitely partitioned between the whites and the natives. It is, therefore, not like Basutoland and Bechuanaland, an exclusively native territory. It contains a fair white population, consisting mostly of old Transvaal residents. The Swazis are physically of an inferior type and will, more than most other native tribes, continue to lean on the whites. There is no reason whatever why the transfer of this territory to the Union should not be immediately effected."*

Lord Milner was disposed to agree with the view that Swaziland should be transferred, but on the return of the two Ministers to the Union the matter was again allowed to drop.

(*iii*) General Hertzog, soon after assuming office in 1924, reopened the question of the transfer of the Bechuanaland Protectorate and Swaziland. As regards the Bechuanaland Protectorate, he was informed that the reply given to General Botha in 1913 continued to hold good†. As regards Swaziland, the attitude of His Majesty's Government at that time is set out in the following extract from a despatch to the High Commissioner, which was shown to General Hertzog:—

"In proposing that you should discuss the matter with General Hertzog, I should explain that His Majesty's Government would not themselves regard the present moment, when the native policy of the Union is about to be subjected to radical revision, as a very opportune one at which to put forward a proposal for the transfer of Swaziland to the Union. It will be appreciated, however, that the present state of uncertainty, consequent on the various statements made during recent years indicating that an application for the transfer of the Territory must be regarded as imminent, is very embarrassing to His Majesty's Government, and makes it impossible to administer the Territory except in a purely hand-to-mouth manner. If, therefore, General Hertzog proposes to ask for the transfer of the administration next year, His Majesty's Government are prepared to discuss matters with him on that basis; if he does not, it would be desirable to arrive at an understanding as to the period for which the question is to be regarded as postponed.

In the event of General Hertzog deciding to apply for the transfer of the Territory, His Majesty's Government are bound by the pledges which they have made to submit the Union Government's proposals to the European and native inhabitants of the Territory. It will be readily appreciated that the greatest prudence would have to be observed in selecting the right moment to consult the inhabitants of the Territory and in framing the proposals to be submitted to them, since, if the reception accorded the proposals were such as to render it necessary to withdraw the application, it would be hardly possible to revive the question for some years to come. I consider therefore that it is important that General Hertzog should submit his proposals to His Majesty's Government, and in the fullest possible elaboration, before any steps are taken to move addresses in both Houses as provided in Section 151 of the South Africa Act. I think also that General Hertzog will agree, in view of his statement in the Union Parliament on the 25th March, that it will be desirable that the consultation with the inhabitants should take place before any formal steps are taken in the Union Parliament."

The reference in the last sentence was to General Hertzog's statement, in reply to a question in the Union Parliament, that if the people of the Bechuanaland Protectorate, natives as well as Europeans, did not desire to come into the Union, he was not prepared to have them incorporated into the Union. As regards Swaziland he also stated:—

"But in Swaziland, too, as I have said, I have taken up the position that unless the people are prepared and desire to come in, I am not going to insist on their coming in".‡

As a result General Hertzog decided to postpone raising the question of the transfer of Swaziland until his native policy had been settled, which the High Commissioner predicted would be equivalent to postponing the question of transfer for some years to come§.

* No. 6 in Dominions (South African) No. 1. † No. 37 in Dominions (South African) No. 1.
‡ No. 42 in Dominions (South African) No. 1.
§ Nos. 50 and 55 in Dominions (South African) No. 1.

(*iv*) As the subsequent trend of Union native policy added to the difficulty of agreeing to a transfer, and as the existing state of uncertainty as to the Territory's political future was incompatible with a policy of development on the part of the Administration, Mr. Amery, the then Secretary of State, during his visit to South Africa in 1927, told General Hertzog that there would be no chance of securing the consent of the House of Commons to the transfer of any of the Territories in the near future and that in the circumstances it would be advisable to allow the whole question to drop for the present*. General Hertzog acquiesced, and in 1930, during his visit to this country, showed no disposition to press for the immediate transfer of any of the Territories, but merely asked the Secretary of State to keep an open mind as to the transfer of Swaziland at some future date, which Mr. Thomas promised to do†.

(*v*) At the beginning of 1931 General Hertzog stated in reply to a question in the Union Parliament, that he refrained while in England from asking for Swaziland solely because the then minority Government were not in a position to deal with such a question; but that a serious attempt to secure it would be made after the next general election in this country. Subsequently, at a meeting in his constituency, he said that it had become quite clear to him that the time was now ripe for territories like the Bechuanaland Protectorate to be handed over to the Union‡.

(*vi*) In 1932 Mr. Havenga, the Union Minister of Finance, took the opportunity of the Ottawa Conference to discuss the question of transfer with the Secretary of State, and later in the same year General Hertzog wrote to Mr. Thomas, referring to the Ottawa conversations, to the following effect:—

"The matter is becoming daily more pressing for a settlement and we find it increasingly more difficult to resist the daily pressure on the part of the people of the Union for measures, restricting competition in our local markets from territories outside the Union. The depression, as you may well imagine, has much accentuated this demand. Yet it is not the only factor which to-day accentuates the necessity for an early solution of this question of handing over the native territories. A very important matter also pressing in the same direction is the question of reserving as much as possible fields of labour within the Union for the Union natives, with the consequential exclusion of natives from outside the Union. As you may well understand, we are very anxious that no such odious distinction be made with respect to the natives from the territories concerned. Unless, however, these be handed over to the Union I cannot see how we can avoid it§."

(*vii*) General Smuts and Mr. Havenga, when in London in 1933, called on the Secretary of State to discuss the matter. They were given a note drawing attention to the various pledges given in the past as to consultation with the inhabitants of the Territories and with Parliament and raising certain questions as to the effect of the passage of the Statute of Westminster on the safeguards intended to be provided by the Schedule to the South Africa Act. They subsequently sent the Secretary of State a memorandum explaining the grounds, economic and other, on which the Union Government considered that the Territories ought to be transferred to the Union. In reply the Secretary of State pointed out that this memorandum did not touch on the points raised in the above-mentioned note, and drew attention to statements which had been made a few days previously in the House of Lords and the House of Commons, reaffirming the pledges given by successive Governments‖.

(*viii*) Later in 1933 General Hertzog again wrote personally to the Secretary of State, referring to the discussions in London with General Smuts and Mr. Havenga, and repeating the view that the time had come for the Union to take over the Territories, but making no reference to the points raised in the note to General Smuts. With the approval of the Cabinet the Secretary of State replied to the effect that His Majesty's Government felt that the present was not a suitable time for raising the question with the native population of the Territories, with a view to the submission of the matter to Parliament here, in accordance with the pledges given by successive Governments as set out in the note handed to General Smuts, of which General Hertzog was again reminded¶.

(*ix*) In April, 1934, General Hertzog wrote to the Secretary of State expressing his disappointment that the present was not regarded as a suitable time for raising the question of transfer and stating the grounds, economic and other, on which he

* No. 9892/27 not printed. † No. 10991/4 not printed. ‡ Nos. 10991/13 and 10991/15 not printed.
§ No. 8 in Dominions (South African) No. 5. ‖ No. 13 in Dominions (South African) No. 5.
¶ No. 17 in Dominions (South African) No. 5.

considered that a continuation of the existing situation would be detrimental to the interests both of the Union and the Territories. General Hertzog had shortly before made a statement on similar lines in the Union Parliament. The Secretary of State's reply, after dealing with these grounds, was to the effect that he associated himself and his colleagues with the terms of Mr. Amery's despatch quoted in (*iii*) above, which referred to General Hertzog's own declarations in the Union Parliament on the 25th March, 1925; that all information went to show that the result of consultation with the inhabitants of the Territories, at least so far as the natives were concerned, would not be likely to be such as to enable transfer, on the basis of General Hertzog's above declarations and of the pledges of the United Kingdom Government, to be proceeded with; that such a situation would be embarrassing and undesirable; and that on these grounds His Majesty's Government in the United Kingdom adhered to the view that this moment was not an opportune one for raising the question, but that they would welcome the closest association and co-operation between the Union Government and the Administrations of the Territories, particularly on economic questions*.

9. So far as the respective Territories are concerned, the position in regard to transfer is as follows:—

Basutoland.

(*i*) As already stated, Basutoland is a purely native territory and it is understood that the natives would be practically unanimously opposed to transfer. In 1931 the High Commissioner stated that it was conceivable that if one of the Territories were transferred to the Union, the natives of another Territory (particularly perhaps the Basuto) might apprehend that their hour also was at hand, and might deem it preferable either to put up such a fight as might deter the authorities concerned from proceeding with an intention of transfer, or even to perish fighting rather than submit tamely to transfer†. In September, 1934, two motions expressing strong hostility to transfer were moved in the Basutoland Council, but when the Resident Commissioner pointed out that in accordance with the pledges above referred to the Basuto would at the proper time be afforded a full opportunity for expressing their views before any decision were made as to transfer, and that in the circumstances it would be best for the Council to defer any discussion till the Secretary of State had definitely asked for their views, the suggestion was received with applause and the matter was dropped‡.

Bechuanaland Protectorate.

(*ii*) The reasons given in 1913 for refusing to hold out any hope that a demand for the transfer of the Protectorate would be favourably considered continue to hold good. In 1933 the local Native Advisory Council passed unanimously a resolution protesting against transfer§. Further, since 1913 the chief ground for assuming that transfer to the Union was the inevitable destiny of the whole Protectorate has disappeared with the decision of Southern Rhodesia not to enter the Union. If Southern Rhodesia had elected to enter the Union, in accordance with general expectations at the time of the passing of the South Africa Act, which expressly provided for her admission, the transfer of the Bechuanaland Protectorate would no doubt have followed, as pointed out in General Botha's memorandum quoted in paragraph 8 (*ii*) above. Southern Rhodesia, however, has chosen, to all appearances irrevocably, to remain outside the Union, as a self-governing colony, with aspirations of becoming the nucleus of a larger State embracing Northern Rhodesia and at least a part of the Bechuanaland Protectorate, and counter-balancing the Union, with its strong Dutch influence, in the South. Whatever view may be taken as to the desirability and feasibility of this project, it is quite clear that, if and when it is decided that a change in the *status quo* of the Protectorate is necessary, the claims of Southern Rhodesia to the reversion of at least the northern part of it will have to be considered, and an undertaking to this effect has already been given in reply to a formal intimation on the part of the Southern Rhodesia Government that they regard the interests of Southern Rhodesia as directly concerned in the future of the Protectorate‖.

(*iii*) Hitherto the only internal demand for a change in the political status of the Protectorate has come from the European settlers in certain districts situated on the Southern Rhodesia and Union boundaries. The intrusion of this element into an otherwise purely native territory is due to the fact that, unlike the rest of the Protectorate, the

* Nos. 1 and 6. † No. 11575/6: not printed. ‡ Nos. 10991/184 and 10991/188: not printed.
§ No. 11 in Dominions (South Africa) No. 5. ‖ Nos. 10563/33 and 10563/35: not printed.

ownership of the land in these districts is in private hands, having been vested by Proclamation in two Companies, the Tati Company and the British South Africa Company. The position in these districts is as follows:—

(*a*) *Tati District.*—This district is historically part of Matabeleland and is close to Bulawayo, towards which its settlers look for their ordinary business and social intercourse. They have more than once petitioned to be transferred to Southern Rhodesia, on the ground that they suffer from being included in a territory where the activities and policy of the Administration are primarily directed by considerations of native rather than European interests. There are no serious administrative or native objections to the transfer of the Tati District, but it has been felt that it might be embarrassing to the Union Government if the United Kingdom Government were to transfer a piece of the Protectorate to Southern Rhodesia, while refusing to consider the transfer of any of the Territories to the Union. On this ground Mr. Amery promised General Hertzog that no application for the transfer of the district to Southern Rhodesia would be entertained without consulting him*. The position was explained at the time to the Southern Rhodesia Government, who had associated themselves officially with the demand for the transfer of this district†, and the Tati settlers were informed by Mr. Amery in 1927, when the matter was put before him during his visit to South Africa, that " although I feel it may be desirable, before very long, to incorporate the district in Southern Rhodesia, I regret that, in view of the general position in the High Commission Territories I cannot see my way to arrange for transfer in the near future‡."

In 1932 Mr. Moffat (the then Prime Minister of Southern Rhodesia) recurred to this matter in a conversation which he had with Sir E. Harding (Permanent Under Secretary of State in the Dominions Office) while in England *en route* for Ottawa. He expressed the opinion that the natural destiny of the Tati District was with Southern Rhodesia, and said that, in his view, the only question was as to the most appropriate time for making a change. He appreciated, however, that the Government here would much prefer that the question of a transfer should not now be raised, and appeared to accept the position§.

In 1934 this question was mentioned by Mr. Huggins, Mr. Moffat's successor as Prime Minister of Southern Rhodesia, in the course of a conversation which he had with Sir E. Harding while in England in the summer of 1934. Mr. Huggins said that he had been approached by representatives of the European community in the Tati District on this matter, but that he had told them that he did not regard the moment as an opportune one for raising the question of the transfer of the district, and that he did not wish to raise the question officially. In a subsequent semi-official letter, referring to this conversation, he asked Sir E. Harding to place before the Secretary of State the strong claim of Southern Rhodesia to that portion of the Bechuanaland Protectorate north of latitude 22° south in the event of its being decided to transfer any part of the Protectorate to the Union of South Africa‖.

(*b*) *Lobatsi, Gaberones and Tuli Blocks.*—In 1926 the European settlers in these districts petitioned to be transferred to the Union, to whose territory they are adjacent, on the same grounds as those advanced by the Tati settlers for transfer to Southern Rhodesia. Unlike the Tati District, the first two of these Blocks could not be transferred without causing serious administrative difficulties, arising chiefly from the fact that the railway runs through them. In the case of the Tuli Block the chief objection to transfer is that in the event of its being ultimately decided to partition the Protectorate between Southern Rhodesia and the Union, it would be convenient and desirable to maintain the Limpopo, which separates the Block from the Union, as the southern boundary of Rhodesia and the Union. The Union Government themselves have never applied for the transfer of these districts separately from the rest of the Protectorate, and are unlikely to do so, except on condition that they are incorporated in the Union, which would involve a departure from the schedule to the South Africa Act. On these grounds the petition was not acceded to¶.

In 1934 a deputation representing these European settlers was sent to General Hertzog petitioning that these districts should be detached from the Protectorate and incorporated in the Union. The deputation were received by General Hertzog who replied to the effect that he was already raising the general question of the transfer of the Protectorate to the Union.

* No. 38 in Dominions (South African) No. 1. † No. 41 in Dominions (South African) No. 1.
‡ No. 7 in Dominions (South African) No. 3. § No. 10841/8: not printed.
‖ No. 10841/15: not printed. ¶ Nos. 57, 59, 65 and 66 in Dominions (South African) No. 1.

(*iv*) Apart from the claims of Southern Rhodesia, and the views of the European settlers, the rights of the British South Africa Company will have to be borne in mind if the transfer of the Protectorate ever comes to be seriously considered. These rights arise from the relations of the Imperial Government and the Company prior to 1895, when promises were made by the former which have been interpreted by the Law Officers to mean that the Company should have preferential, but not exclusive, rights to the acquisition of any concessions or unoccupied land in the Protectorate which is not required for native or administrative purposes. In accordance with this promise it has been the practice for the Company to be consulted before any Crown Land is alienated in the Protectorate. The point is an important one, since, in the event of the Union Government's desiring to acquire the Protectorate for the purpose of the settlement of "poor whites" or landless natives, the preferential rights of the British South Africa Company might stand in the way. It may be added that in 1913, when there was a rumour that the Protectorate was about to be transferred, the British South Africa Company asked the Secretary of State what steps would be taken to safeguard their rights, which they feared would not be recognized by the Union Government. They were informed that a discussion of the transfer of the Protectorate to the Union was premature*, and their inquiry remained unanswered, but it may be taken for granted that it would be repeated if transfer again became likely.

Swaziland.

(*v*) Conditions in Swaziland have always been recognized as less unfavourable to transfer than those in the other two Territories. In the first place Swaziland is not a purely native territory, but contains nearly three thousand European settlers. Only one-third of its total area has been reserved for the natives, and this is interspersed among the remaining two-thirds which belong to Europeans. Conditions in the Territory as a whole are therefore comparable to those in one of the four "European" districts in the Bechuanaland Protectorate. Moreover, the Union Government have historically a stronger claim to Swaziland, which prior to the Boer War was administered by the South African Republic, and till 1907 was administered by the Governor of the Transvaal, than to the Bechuanaland Protectorate and Basutoland which (with the exception of a brief and unfortunate connexion with the Cape of Good Hope already referred to in the case of the latter) have always been administered by the United Kingdom Government through the High Commissioner for South Africa. On these grounds His Majesty's Government have shown themselves less averse to the transfer of Swaziland than to that of the other two Territories, and in 1925, as already stated, went so far as to formulate the terms on which they would be prepared to discuss the question with General Hertzog. The substance of the stipulations then made was as follows:—

(*a*) the inhabitants, native and European, to be consulted before transfer, and preferably before an official demand for transfer;
(*b*) administration after transfer to be under the terms of the Schedule to the South Africa Act.
(*c*) the Union Government to assume responsibility for all financial obligations of the Swaziland Government existing at the date of transfer†.

10. It seems clear that these conditions must still apply to the transfer of any or all of the Territories. As to this:—

(i) With regard to consultation, the attitude of His Majesty's Government was explained in 1925 to General Hertzog (see paragraph 8 (*iii*) above). It was on these grounds that General Hertzog was informed in 1933 and 1934 that the moment was not considered an opportune one for consulting the native inhabitants as to transfer.

(ii) With regard to administration after transfer, the South Africa Act provides that this shall be subject to the terms and conditions of the Schedule to the Act. These terms were drawn up by the South Africa National Convention and were accepted by that body and by the Parliament of the United Kingdom as embodying certain principles and safeguards to native rights long recognized as essential. They provide, *inter alia*:—

(*i*) that no part of the native reserves may be alienated from the native tribes inhabiting the Territories (Section 14);
(*ii*) for the composition of the Commission charged with the duty of advising the Prime Minister in the administration of the Territories (Section 3);
(*iii*) that the levying of any differential duties or imposts upon the produce of the Territories shall be prohibited (Section 17).

* No. 7 in African (South) No. 1003. † Nos. 50, 67 and 68 in Dominions (South African) No. 1.

The importance of the Schedule as a guarantee that the existing rights of the natives would not be prejudiced in the event of transfer was explained to the Swazi deputation in 1923 by the then Secretary of State. On this occasion the Secretary of State said:—

> "I need hardly say that His Majesty's Government would not support in the House of Commons or elsewhere any proposal for transfer if it involved the impairment of such safeguards for native rights and interests as the Schedule to the South Africa Act was designed to secure*."

Since the South Africa Act was passed, the constitutional position has been affected by the passage of the Statute of Westminster. In view of this Statute the Schedule to the South Africa Act can no longer be regarded as affording in itself a legal safeguard, though it is clear from what is stated above that transfer could only be made subject to agreement that the general scheme of the schedule would be maintained.

There are two provisions in the Schedule which require special consideration in this connexion, viz., (*i*) Section 20 which states that the King may disallow any law made by the Governor-General in Council by Proclamation for any territory, (*ii*) Section 25 providing that all Bills to amend or alter the provisions of the Schedule shall be reserved for the signification of His Majesty's pleasure.

Before any question of transfer could be considered it would be necessary to ascertain:—

(*a*) what the Union Government would propose to substitute for the provision relating to the power of disallowance. (This, at the time when the South Africa Act was passed, meant disallowance on the advice of His Majesty's Government in the United Kingdom.)
(*b*) What alternative form of security could be provided in place of the provision as regards reservation. (At the time of the South Africa Act His Majesty would have been advised as to the Bills in question by His Majesty's Government in the United Kingdom.)

(iii) With regard to finance (see paragraph 9 (*v*)), since 1927 Swaziland has been in receipt of financial assistance from the United Kingdom Exchequer. This assistance (and also certain assistance in respect of development provided from the Colonial Development Fund) has hitherto taken the form of loans, free of interest for the present, but on terms to be prescribed hereafter, so that if the Territory is transferred to the Union the responsibility for the interest and sinking fund charges, which are at present borne by His Majesty's Government in the United Kingdom, may be taken over by the Union Government. The Bechuanaland Protectorate is also at present in receipt of assistance from the United Kingdom Exchequer, though so far this has taken the form of free grants. Basutoland has hitherto been self-supporting.

DOMINIONS OFFICE,
October, 1934.

10991/209.

No. 10.

TELEGRAM

from

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received 2.43 p.m., 16th February, 1935.)

[*Answered by No. 11.*]

No. 29. 16th February. The Prime Minister has received a letter from the Elected Members of the Bechuanaland Protectorate European Advisory Council in which they ask him to receive deputation representing Tuli Gaberones and Lobatsi Blocks in order that they may put their views before him and request his assistance in bringing territory within the Union; they also asked for my assistance in the matter in a letter to Rey. Prime Minister has written to me stating that since the South African Act envisaged and provided for the transfer of the Administration of the Native Territories, he is unable to see how he could refuse or be expected to refuse to receive such a deputation; he feels, however, that His Majesty's Government in the United Kingdom

* No. 17 in Dominions (South African) No. 1.

should be informed of request and given opportunity of offering observations. The deputation wishes to see the Prime Minister on the 1st March and the matter is therefore urgent.

I had asked Liesching and Dickson to go over and discuss the matter with Bodenstein before I had received this letter. Bodenstein referred to argument in the above-cited letter in reply to which they reminded him of considerations submitted to the Prime Minister by my predecessor after similar episode last year and apparently accepted by the Prime Minister. Reference Stanley's letter of 2nd June* to Harding. While it is clear that on constitutional issue the Prime Minister is in the wrong, I think it would be bad tactics to raise objections to his receiving deputation because this would be interpreted as an attempt to suppress agitation for transfer. I would suggest therefore that while we should observe that on a strict constitutional view a Dominion Prime Minister ought not to receive such a deputation, we should say that in this instance as a special case we would be prepared to waive this objection. I also think that deputation should be told through Rey to come to this Office and that the Administrative Secretary should take the deputation over to the Prime Minister's Office and be present at the interview.

I propose through Rey to send to the deputation an invitation that before they go to the Prime Minister they should also see me.

10991/209.

No. 11.

TELEGRAM

to

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Sent 9.45 p.m., 19th February, 1935.)

No. 23. With reference to your telegram No. 29 of the 16th February†. You will see from No. 30 of the papers printed as " Dominions (South African) No. 1 " that, on at least one previous occasion, arrangements have been made by the High Commissioner for the Prime Minister of the Union of South Africa to receive a deputation from the High Commission Territories in connexion with the question of transfer. In the case of the Bechuanaland Protectorate deputation of 1924 mentioned in No. 22 of the same print, as well as of last year's Bechuanaland Protectorate deputation, the attitude adopted by us was that General Hertzog ought not to receive such deputations without consulting the High Commissioner. As, on the present occasion, he has complied with this condition, I do not think that we need raise the constitutional point and it would seem sufficient to reply that you have no objection and otherwise, if practicable, to adhere to the procedure followed in the case of the interview in 1925 referred to above.

On that occasion, you will notice, the Imperial Secretary excused himself from being present at the interview, and, unless you see reason to the contrary, I am disposed to think that this precedent should be followed on the present occasion. The *communiqué* that was then issued may also be a useful precedent.

10991/212.

No. 12.

DESPATCH

from

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received 1st March, 1935.)

(Bechuanaland.)
(No. 100, secret.)

Cape Town, 18th February, 1935.

SIR,

With reference to my telegram No. 29 of the 16th February†, I have the honour to transmit herewith a copy of a despatch from the Resident Commissioner of the Bechuanaland Protectorate regarding a proposed deputation from the European

* No. 10991/139: not printed. † No. 10.

Advisory Council to the Prime Minister of the Union for the purpose of putting forward a case for the incorporation of the Tuli, Gaberones, and Lobatsi Settlements within the Union.

I also enclose a copy of a letter addressed to me by General Hertzog on the subject together with a copy of the note of an interview which Mr. T. A. Dickson, the Acting Administrative Secretary, and Mr. P. Liesching, the Political Secretary, had with Dr. Bodenstein on the 16th instant.

I have, &c.,
W. H. CLARK,
High Commissioner.

Enclosure 1 in No. 12.

Resident Commissioner's Office, Mafeking,
13th February, 1935.

SIR,

I have the honour to transmit a copy of a letter which I have received from Mr. McFarlane, the senior member of the European Advisory Council, in which he states that a communication has been addressed to the Right Honourable the Prime Minister, asking him to receive a deputation from the European Advisory Council on the 1st March, for the purpose of putting forward their case for the incorporation of the Tuli, Gaberones, and Lobatsi Settlements within the Union.

2. I have caused an acknowledgment of the letter to be sent to Mr. McFarlane, with an indication that a copy thereof has been transmitted to Your Excellency.

I have, &c.,
C. F. REY,
Resident Commissioner.

His Excellency,
The High Commissioner,
Cape Town.

Strathearn, Tsessebe, 11th February, 1935.

YOUR HONOUR,

At the last session of the Council it was agreed that a deputation from this Council should seek an interview with the Prime Minister of the Union of South Africa craving his assistance towards the incorporation of the Tuli, Gaberones, and Lobatsi Settlements within the Union.

The deputation of members nominated are anxious that this meeting takes place on the 1st March, and are approaching the Right Honourable the Prime Minister to fix the above date. His Excellency's assistance would be greatly appreciated.

Yours, &c.,
R. MCFARLANE.

His Honour,
The Resident Commissioner.

Enclosure 2 in No. 12.

Prime Minister's Office, Cape Town,
16th February, 1935.

DEAR SIR WILLIAM,

I have received a letter from Mr. Robt. McFarlane, Chairman of the elected members of the European Advisory Council of the Bechuanaland Protectorate, intimating that that Council unanimously decided to ask me to receive a deputation of members representing Tuli, Gaberones, and Lobatsi Blocks, who are anxious to state their views and ask for my assistance to bring the territory within the Union. In view of the fact that the transfer of the administration of the Native Territories was visualized by and provided for in the South Africa Act, I cannot see how I could refuse or be expected to refuse to receive such a deputation. I feel, however, that His Majesty's Government in the United Kingdom should be informed of the request and be given

an opportunity of offering such observations as they might wish to make. The matter is somewhat urgent, as the deputation would like to see me, if at all possible on the first of March next.

I would, therefore, very much appreciate it, if you would bring the request to the notice of His Majesty's Government in the United Kingdom at an early date.

Yours, &c.,
J. B. M. HERTZOG.

Sir William Clark,
High Commissioner for the United Kingdom,
Cape Town.

Enclosure 3 in No. 12.

NOTE OF INTERVIEW WITH DR. BODENSTEIN AT 11.10 A.M. ON THE 16TH FEBRUARY, 1935, REGARDING THE REQUEST ADDRESSED TO THE PRIME MINISTER OF THE UNION BY THE EUROPEAN ADVISORY COUNCIL OF THE BECHUANALAND PROTECTORATE THAT HE SHOULD RECEIVE THEIR DEPUTATION.

We called upon Dr. Bodenstein, on the High Commissioner's instructions, and informed him that the High Commissioner had just received a despatch from the Resident Commissioner of the Bechuanaland Protectorate to the effect that the European Advisory Council had written direct to General Hertzog asking him to receive them as a deputation, and had at the same time asked for the High Commissioner's assistance in arranging for the reception of the proposed deputation. We referred to the irregular procedure adopted by the Advisory Council in writing direct to General Hertzog instead of through the Resident Commissioner and High Commissioner—an irregularity for which the Union Government were not in any way responsible—and expressed the hope that General Hertzog's reply might be sent through the proper constitutional channels.

Proceeding to the more important constitutional issues involved, we reminded Dr. Bodenstein of the deputation of European settlers from the Protectorate which had been introduced direct to the Prime Minister last year by Mr. Bain Marais, M.P., and of the action taken subsequently by Sir Herbert Stanley, on the instructions of his Government, in drawing General Hertzog's attention to the constitutional proprieties. The High Commissioner, we said, had not authorized us to define his attitude towards the present request by the European Advisory Council, but he had wished us to ascertain whether the views of the Union Government coincided with those expressed by Sir Herbert Stanley to General Hertzog in June of last year. We said that, for instance, the Secretary of State for Dominion Affairs would, in our firm opinion, never contemplate receiving a deputation of Union nationals, e.g., devolutionists from Natal, certainly not without the previous consent of the Union Government. Similarly, petitions or expressions of opinion received from any section of Union nationals in writing were invariably referred unanswered to the Union Government. In our view, this was the only correct procedure on such occasions. Mr. Dickson pointed out that the reasons urged against the propriety of receiving a miscellaneous deputation of European settlers, such as last year's deputation, applied with even greater force to a deputation consisting of the European Advisory Council.

Dr. Bodenstein, who received these representations in a friendly spirit, disclaimed any knowledge of what had passed between Sir Herbert Stanley and General Hertzog in June of last year, but said that he had this morning already drafted a letter to the High Commissioner on General Hertzog's instructions informing him of the request received from the European Advisory Council, and consulting him as to the attitude to be adopted towards it. We understood from Dr. Bodenstein that the letter expressed itself generally in favour of the deputation being received by General Hertzog, on the ground that certain sections of, and the schedule to, the South Africa Act had clearly envisaged the transfer of the territories, that the question of transfer was one which, as the United Kingdom Government knew, the Union Government were pressing, and that mention had frequently been made of the necessity of ascertaining the wishes of the inhabitants of the territories. Dr. Bodenstein said that the circumstances were special. The Union Government would not, for instance, think of receiving a deputation from Southern Rhodesia.

In reply to this argument, we stated that in spite of the special circumstances to which Dr. Bodenstein had alluded, it appeared to us that in determining the constitutional proprieties regard must be had to the existing political divisions between the territories and the Union. The Bechuanaland Protectorate was at the present time under the administration of His Majesty's Government in the United Kingdom, and any

expressions of opinion by its inhabitants must, in our view, properly be made to or through His Majesty's Government in the United Kingdom, or through its representatives. We reminded Dr. Bodenstein of a passage in a letter on the subject of nationality written by himself by direction of the Prime Minister and published in this morning's newspaper, in which, speaking of the position of a British subject resident in the Union who had acquired also Union nationality, he had said "although he may not lose his common status, it is but common-sense that once having become a member of our community, he should not be entitled, as against the laws of our Parliament or the action of our Government, to appeal to the United Kingdom Government for help, as a United Kingdom subject, who had not become a Union national, would be entitled to do in an appropriate case." The converse, we urged, must be equally applicable. We made it clear, however, that we had no authority to anticipate the expression of the High Commissioner's views as to whether this deputation should be received by the Prime Minister or not received, or if it were received, whether it should be introduced by the High Commissioner or some person deputed by him for the purpose. All that we wished to do, we said, was to clear the air on the constitutional principles underlying the matter, and we said that we felt that Dr. Bodenstein would recognize the force of the arguments we had been instructed to put forward.

The interview, which had been on a very friendly basis, then came to an end.

T. AINSWORTH DICKSON.
P. LIESCHING.

16th February, 1935.

10991/213. No. 13.

TELEGRAM

from

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received 2.15 p.m., 2nd March, 1935.)

No. 40, secret. 2nd March. McFarlane, Van Rensburg, Glover, and Going, the delegation from the Bechuanaland Protectorate, arrived yesterday morning, and without delay called at this Office where Dickson had a long talk with them. In the meantime I had asked them to lunch. They arrived in a rather hostile mood but quickly thawed out and we became very friendly. The suggestion came from McFarlane himself that after the interview with the Prime Minister they should come and tell me all about it. Dickson then conducted them to the Prime Minister's room at the House. Prime Minister, who had no other Minister or official with him, invited him to stay, but he excused himself.

Delegation duly returned this morning. They said that the Prime Minister had received them most kindly and thanked them for their desire to help him. He did not give any encouragement to the idea of the separate transference of the Blocks to the Union. He said he would, however, guarantee that in the event of the transfer of the Protectorate, farmers would receive identical treatment with farmers of the Union in respect of marketing. On the question of transfer Prime Minister stated that when he went to England for the Silver Jubilee he would demand transfer within a definite period (he mentioned six or twelve months), and he added surprising statement that if his demands were refused he would prohibit entry into the Union of South Africa of a single native from the Protectorate.

Delegation appeared to me to be honest-minded men contending against great difficulties without perhaps much intelligence. They have agreed to give nothing of this to the Press but of course there are considerable chances of leakage especially perhaps from the Prime Minister himself.

I am of the opinion that I should go and have a talk with the Prime Minister and endeavour to discover what is really in his mind. There is no necessity for me to pretend ignorance of what passed since delegation made no secret of the fact that they intended to return here after their interview and I might be able in a friendly talk to drop a hint that the use of language of this kind to third parties is undesirable and imprudent. But the Prime Minister's utterances are, as you know, growing increasingly irresponsible about matters which move him and he is causing considerable anxiety to his colleagues

in that respect. It might perhaps be better that I should be able to say that I had not received any instructions from you before asking for that interview. In any case, as I am full up early next week with a visit from Tshekedi and Rey passing through, I cannot ask for interview for two or three days so there will be time to telegraph to me if for any reason you do not approve of this proposal.

10991/2208. No. 14.

DESPATCH

from

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received 22nd March, 1935.)

(No. 149, secret.)

Cape Town, 11th March, 1935.

SIR,

I have the honour to forward to you herewith a memorandum of a talk which I had yesterday morning with General Hertzog at Groote Schuur on the subject of the transfer of the High Commission Territories.

2. It will be seen that the Prime Minister's words lend no colour to the rumour reported in my secret despatch No. 150 of to-day's date* to the effect that the United Party caucus had decided that addresses praying for the transfer of the Territories, as provided for in section 151 of the South Africa Act, should be submitted to both Houses of Parliament before General Hertzog leaves for England. Nor does the Prime Minister's attitude seem consistent with the language which he would appear to have used to the recent delegation of European settlers from Bechuanaland, but as I have reported before, he frequently allows himself to be carried away by the circumstances of the moment into saying more than he means, and I do not attach much importance to his remarks on that occasion. In any case, I think we are entitled to regard his language of yesterday as reassuring, at any rate for the moment.

3. As regards the alleged administrative difficulties which are supposed to be implicit in the present situation, I pressed our argument that these, so far as they exist, could be met by a closer co-operation between our administration and the Union Government Departments concerned, but I think there is little doubt that these are not the real source of trouble. The Government are probably exposed to political pressure about the Territories from diverse quarters; are anxious lest the pressure might at any moment become acute; and consequently wish, if they can, to anticipate it.

4. I will continue to watch the matter carefully and, when I have had time to consider the situation more fully, will address you further upon it in anticipation of your discussion with General Hertzog.

I have, &c.,

W. H. CLARK,

High Commissioner.

Enclosure in No. 14.

MEMORANDUM OF A TALK WITH THE PRIME MINISTER AT GROOTE SCHUUR ON 10TH MARCH, 1935.

I called on the Prime Minister as arranged at 10.30 and we walked about the grounds for half an hour talking on casual topics. We then sat down to tea on the *stoep* and I thought that the time had come to open up the question of the Territories. I asked if he would care to tell me something of what was in his mind on the subject. I explained that I was speaking entirely on my own initiative and not on instructions from the Secretary of State, and that my only desire was to be helpful in a matter which had its difficulties for both of our Governments.

2. The Prime Minister said he would be very glad to give me his views and would begin by touching on the history of the question as from the date of Union. This consisted of a rather confused account of the various approaches which he had made since

* No. 15.

the War to successive Governments in the United Kingdom. He also showed incidentally that he was unaware that Basutoland had been definitely annexed. He thought it was a Protectorate on the same footing as Bechuanaland.

3. The Prime Minister then turned to the case for incorporation. He began with the alleged administrative drawbacks implicit in the present status of the Territories. These he cited under the heads specified in his letter to Mr. Thomas of the 25th April, 1934*, viz., (*a*) control of pests and diseases, (*b*) competition of native labour, and (*c*) competition of native cattle.

(*a*) *Pests and diseases.*—The Prime Minister talked on the lines of his letter and I am afraid that he has not absorbed the effective rejoinder in the Secretary of State's reply of the 16th July last†. He mentioned locusts, foot-and-mouth disease, East Coast fever, etc. I replied that I felt sure the co-operation between our officers and the Union Veterinary Department was in fact much closer than he seemed to realize and cited what happened on the occasion of the recent outbreak of foot-and-mouth disease in Bechuanaland when Colonel Rey, as soon as he received the first warning from Mr. Chase, our Principal Veterinary Officer, telephoned Dr. du Toit, the Director of Veterinary Services at Pretoria, and invited him to come up at once to Mafeking to concert measures with the Protectorate Administration. This was done and joint precautions were adopted. I also pointed out that our control of the situation in Bechuanaland had been so efficient that Colonel Reitz was now about to re-admit our cattle into the Union. In any case this was surely a matter which could be met by the closer economic association and co-operation referred to in the correspondence with the Secretary of State. The Prime Minister contended that in the event of any outbreaks of disease in the Union or any influx of pests, the trouble was always laid to the charge of the nearest Territory. I suggested that we might agree that in such circumstances the trouble would almost always be attributed to the nearest Territory, but that it did not at all follow that the imputation would be well-founded. I might have added, but tactfully abstained, that the same imputation would be made even if the Territories had been incorporated into the Union and would be followed by restrictions similar to those which so seriously interfere with the marketing of agricultural products from the Transkei.

(*b*) *Competition of native labour.*—The Prime Minister did not press this point very seriously. He admitted that native labour was necessary to the farmers as well as to the mine-owners but argued that the Dutch farmer at any rate was sufficiently politically-minded to risk loss of his labour if the Government should feel it necessary to prohibit the entry of native labour from the Protectorates. He said that natives in the Transkei found difficulty in obtaining employment in view of the competition of our natives but added with commendable candour that he was surprised at the statement being made. He tried to explain away the Mozambique Agreement, not very convincingly, by saying that his Government in entering into this agreement were mainly concerned with staking out a claim for the future. I ventured to point out that the influx of our labour, so far from being detrimental to the Union, constituted from every aspect a real economic advantage. The labour was needed, the Basutos provided some of the best labour on the Rand, and the wages of our natives were spent either within the Union itself or on the purchase within their respective Territories of goods manufactured in the Union. The Mozambique natives on the other hand took their savings back with them and spent them in Portuguese territory. The Prime Minister ended by practically abandoning this point.

(*c*) *Competition of native cattle.*—This the Prime Minister said was the most serious factor. The farmers would not stand for it much longer, but would demand that further restrictions or embargoes should be imposed against the produce of the Territories. I asked if the farmers realized that the effect of transfer would be the removal even of existing restrictions. The Prime Minister insisted that they were fully aware of this, but he maintained that the Dutch farmer at any rate was mainly concerned with the fact that the competition came from Territories which were not part of the Union. He contended that they would not object to the competition when once incorporation had taken place. They would then regard it as fair competition instead of unfair competition. He cited South-West Africa as an example of how incorporation had worked in this respect.

4. He then went on to emphasize how widespread and how strong the feeling about the Territories had become throughout the Union not only amongst the farmers but in

* No. 1. † No. 6.

the community generally. He told me he had been pressed by members of his party to allow resolutions to be moved in the House of Assembly last year and during the present session urging action under section 151 of the South Africa Act, but he had discouraged them as he had no desire to embarrass His Majesty's Government. He could not, however, continue indefinitely to repress this sentiment, and he regarded the issue as having now become urgent.

5. I asked him whether, if this were so, he had considered what would be the best line of approach. General Hertzog, rather to my surprise, said he would be satisfied if His Majesty's Government would undertake to transfer the Territories to the Union within a specified period. I said that I was speaking entirely for myself, but it looked to me as if such an undertaking would hardly be practicable in view of our pledges to consult the natives and submit the issue to our Parliament before transfer, since the result of consultation, at whatever date it was carried out during the fixed period, might be such as to make fulfilment of the undertaking a matter of great difficulty. The Prime Minister recognized that we were bound to consult and proceeded to give me his views on this aspect of the question:—

(*a*) He thought possibly the natives were not so unanimous as generally reported, and referred to approaches which had been made to him some little time ago on behalf of a Bechuana chief who favoured transfer.

(*b*) He thought that it would make a great difference if British officials entrusted with the task of consultation were instructed to do their best to influence the native vote towards acceptance of transfer. As regards this, I felt bound to point out that in doing so we should be assuming a large responsibility and that evidently much would depend on the terms of transfer and safeguards offered by the Union Government, and especially on the nature of the new native policy which I understood was in the course of preparation. On this point the Prime Minister said that he very much hoped that the native policy Bills would be tabled before he left for England. He also argued that in effect the native policy of the Union was not really material in respect of the Territory natives, since they were provided for in the Schedule to the South Africa Act. I reminded him that the Schedule was on a very different footing since the passage of the Statute of Westminster and that educated chiefs like Tshekedi were fully alive to this fact. He agreed that safeguards would have to be devised.

(*c*) He pointed out that even if the results of consultation were adverse to the Union, and he fully expected that they would be, too much weight should not be attached to them. At the time of Union, he said, it was clearly contemplated that the Territories would be handed over within a relatively short period although it was not improbable that the natives might prefer to stay as they were, and he understood that we recognized that the assent of the natives was not to be regarded as a *sine qua non*. I agreed that we were not pledged on the latter point, but I reminded him that the atmosphere to-day on such matters as self-determination was very different from what it was in 1910, and I felt it must be recognized that His Majesty's Government would be in an embarrassing position if the results of consultation were very strongly adverse.

6. In all our talk the Prime Minister had not given the slightest indication that he was contemplating any immediate drastic action such as the moving of addresses under section 151 of the South Africa Act before leaving for England. On the contrary, his whole tone and attitude suggested that while he wanted something done as soon as possible, he would be content with comparatively little. I could not well question him directly on the point, but in hopes of getting some light on the immediate future, I said that I supposed he would wish to discuss the question of the Territories when he was in London. He assented and said that he had been thinking of instructing Mr. te Water by telegraph to ask the Secretary of State if he could arrange to spare the time for discussion of this question. He added that perhaps as we had been talking the matter over, I would telegraph* this request to the Secretary of State instead, which I promised to do. General Hertzog repeated that he particularly desired to avoid embarrassing His Majesty's Government. He appreciated their current difficulties and realized that he could hardly expect that the matter could travel very far before the next general election.

7. Our conversation throughout was very cordial and entirely informal. When I was leaving, the Prime Minister was good enough to say that he would always be glad to see me for a talk on a Sunday morning if I had affairs which I wished to discuss with him.

W. H. CLARK.

11th March, 1935.

* No. 10991/215: not printed.

10991/221S. No. 15.

DESPATCH

from

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received 22nd March, 1935.)

(No. 150, secret.)

SIR, Cape Town, 11th March, 1935.

With reference to my secret despatch No. 149 of to-day's date* I have the honour to forward herewith a note of an important interview which Mr. J. S. Marwick, M.P., had with Mr. Liesching, at the former's request, on 5th March, 1935, on the subject of the transfer of the High Commission Territories and of native policy in the Union.

I have, &c.,

W. H. CLARK,

High Commissioner.

Enclosure in No. 15.

NOTE OF INTERVIEW WITH MR. J. S. MARWICK, M.P., ON THE 5TH MARCH, 1935. (Secret.)

1. Mr. J. S. Marwick, M.P., the prominent member of the Dominion Party, telephoned to me from the House of Assembly to-day and asked whether he could see me during the morning. He came over about 11.40 a.m., and stayed till 1.10 p.m. I had not met him before.

2. Mr. Marwick said that he had felt impelled to come and speak to me in strict confidence with regard to events which he had every reason to believe were impending in connexion with the Union's native policy, and the demand for the transfer of the High Commission Territories. He and his Party colleagues had, he said, been tempted more than once during the constitutional legislation of last session to consult the High Commissioner's Office on various questions at issue, but had conscientiously refrained from doing so. The question of the transfer of the Territories was, however, being contemplated by the Union Government in circumstances, following the declaration of the sovereign independence of the Union, which were entirely different from the circumstances in which that transfer was originally considered in connexion with the South Africa Act, 1909. There was grave danger that justice would be travestied, and for this reason he proposed to divulge certain information, although in doing so, he would, strictly speaking, be committing a breach of Parliamentary privilege.

3. Mr. Marwick said that he had learned from a source which he regarded as entirely trustworthy that the United Party caucus had decided that before General Hertzog left for London on the 12th April, addresses from both Houses of Parliament of the Union to the King would be submitted under the terms of section 151 of the South Africa Act praying for the transfer of the High Commission Territories to the Union. He added that two Bills defining the native policy of the Union (a Land Bill and a Parliamentary Representation Bill) had been exhaustively discussed in draft by the Joint Select Committee on Native Affairs, and that these Bills might possibly be tabled before the Prime Minister's departure. This does not necessarily imply that the Bills will have been introduced. They could be tabled as papers emanating from the Joint Select Committee, and it will be remembered that in the Speech from the Throne it was promised that papers would be laid on behalf of the Select Committee during this session. (This information confirms similar information communicated both to the High Commissioner and to myself in confidence by a member of Parliament belonging to the United Party during last week-end.)

4. Mr. Marwick then gave me a review of the general course of the discussions which had taken place in the Joint Select Committee on Native Affairs since 1926 leading down to the present date. The original Bills, he said, sponsored by General Hertzog, had been turned down at a joint sitting of both Houses in 1926. The broad outline of these Bills and the intention underlying them was that natives should be represented by European members in the House of Assembly, but that the present mixed electoral roll of European, coloured and native persons in the Cape should be

* No. 14.

abolished. In its place there would have been a separate native voters' roll on a qualification basis which would have meant granting the franchise to a certain number of natives in Natal, the Transvaal, and the Orange Free State. Four, or possibly a maximum of six, seats would have been allotted to those European members representing native interests. There would have been one for Natal, one for the Transvaal and the Orange Free State together, and two for the Cape Province (one for the Ciskei and one for the Transkei). The object underlying these legislative proposals was to segregate and limit the Parliamentary representation of natives, to make their numerical position and political influence more clearly visible, and to guard against the danger that, by a process of economic improvement extending over a long period of years, there might be an insidious increase in the political power of the natives under the old system of the mixed electoral roll. The proposals, which amounted in fact to extending the Cape franchise to the other three provinces, had encountered such opposition from the Transvaal, the Orange Free State, and Natal, that the measure was defeated.

5. From 1926 to 1932 there had followed a series of Joint Select Committees appointed each year, from which a fresh set of proposals had emerged. These proposals would have provided that, in addition to the existing four senators nominated specially " for their thorough acquaintance, by reason of their official experience or otherwise, with the reasonable wants and wishes of the coloured races in South Africa " (South Africa Act, 1909, section 24 (ii)), there should be a maximum of six elected European representatives of the natives in the Senate. The idea had at one stage been mooted (*a*) that these elected representatives might be natives, and (*b*) that the number might later be increased to eight in order to provide for representation of the Indian community also, but no agreement was reached on these points. Finally, there was to have been a Grand Council of the Senate to deal with native affairs and advise on native legislation.

6. Mr. Marwick gave the following explanation of the objects underlying these proposals. Representation in the Senate was felt to be preferable because the Senate was not the democratic House, but the House of review. Its members were thought to be more broad-minded and tolerant, and feelings would not be apt to run so high as in the lower House. Similarly, in the method of electing the six elected Senate representatives, it was desired to avoid exposing the natives to democratic political methods, and to the mercies of candidates who were prepared to indulge in cheap and transient appeals. For this reason, an endeavour was made to adopt the more conservative methods familiar to the natives through their tribal organizations. Election would have been by electoral colleges, the exact character of which would have varied according to the different provinces. In Natal, for instance, election would have been by the native chiefs whose votes would have been made proportionate to the numbers of tax-paying natives under their control. In the Transvaal and Orange Free State, election would have been by the chiefs and by the native councils. In the Cape Province (Ciskei and Transkei) by native councils only. This basis of election had sought deliberately to eliminate the voting power of detribalized urban natives and was expected thus to encourage the principle of segregation of Europeans and natives. The system, however, would have involved allowing the Cape franchise on its present basis to die out, i.e., no new names would have been added to the roll, though those enfranchised on the present mixed roll would have been allowed to vote on it during their lifetime. On being confronted with these franchise proposals, General Smuts had declared that he was so deeply committed to the maintenance of the Cape franchise that he must oppose it. Of the South African Party, only Colonel Stallard, Mr. Heaton Nicholls, and Mr. Marwick supported the scheme. I gather, however, from the fact that the proposals reached a form in which General Smuts registered his dissent, that they must have enjoyed the support of the Nationalist members of the Joint Select Committee.

7. With the advent of coalition in 1932-3, the deliberations of the Joint Select Committee were virtually suspended, but at the end of the session of 1934, a meeting of the Joint Select Committee was called and it was proposed and approved that General Hertzog and General Smuts, as the joint leaders, should be called upon to put forward a scheme upon which they could agree.

8. The scheme sponsored by General Hertzog and General Smuts has now come before the Joint Select Committee in the form of what Mr. Marwick describes as " an adulterated Bill ", of which the main features are as follows: section 1 of the Bill would provide that no further natives should be admitted to the existing mixed voters' roll from the date of its enactment. Mr. Marwick stated that to his astonishment, the Joint Select Committee were, in the first instance, informed only of the contents of section 1 and were invited to express their agreement with it, whilst still without any information as to what the rest of the Bill would contain. The majority naturally declined to commit

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themselves. Colonel Stallard had given a very guarded and provisional acceptance to this section, but General Smuts, although joint sponsor with General Hertzog of this draft Bill, had surprised everybody by announcing that he would vote against section 1. Dr. Malan had challenged General Smuts on this inconsistency, which Mr. Marwick, who cherishes a profound detestation of General Smuts, regarded as a most Machiavellian manœuvre; for General Smuts, said Mr. Marwick, only intended to save his face by recording an adverse vote, knowing well that if the Bill reached the House, he and other ex-South African Party members who were pledged to maintenance of the Cape native franchise would be easily outvoted.

9. The remainder of the Bill was then disclosed to the Joint Select Committee and was found to provide for four existing nominated senators (section 24 (ii) of the South Africa Act) who might possibly be increased to six. Elected European representatives of the natives in the Senate, four in number, remain as a feature of the Bill, but the basis of election had been diluted and democratized as compared with the basis proposed prior to coalition (see paragraph 5 above). Greater voting power was given to the native councils, as compared with the chiefs, and electoral powers were also given to native advisory boards, which, according to Mr. Marwick, are small boards of natives of a very indifferent quality in urban areas. In Mr. Marwick's opinion, this scheme compared most unfavourably with the previous basis of election, which would have tended to preserve the tribal system. In his view, it would tend to hasten the break-up of the tribal system. Finally, instead of the Grand Council of the Senate, there was to be a separate Native Representative Council entirely outside Parliament, presided over by the Secretary for Native Affairs. Five European native commissioners would be members without voting power, and there would be twenty native members elected by much the same electoral colleges as those proposed for the elected European representatives of the natives in the Senate. The functions of this Council would be wide. They would have power to make reports to Parliament on native legislation, on expenditure for native purposes, and on any other matters referred to them by the Minister of Native Affairs. In some cases they would have the right of initiating proposals or reports; in others, they could only advise or report at the request of the Minister. The Council would also have power to report on certain matters on their own initiative to the Governor-General.

10. Mr. Marwick said that in the discussions on this scheme, it had been noted that among the qualifications for election as one of the twenty native members of the Representative Council was a stipulation that the native must have been born in the Union. Mr. Marwick, supported by Mr. Payne, M.P. for Tembuland, had pointed out that Jeremiah Moshesh of the Transkei, a most enlightened and well-educated chief and one of the most valuable members of the Transkei Bunga, would be disqualified under such a provision, as he had been born in Basutoland. This, said Mr. Marwick, had evoked a tirade from General Hertzog, who had made it the text for an outburst on the subject of the pressure which he meant to bring to bear with a view to securing the incorporation of the High Commission Territories. Mr. Marwick had been much impressed with the violence of the views expressed by General Hertzog on this occasion, although General Hertzog was reminded that the father of Jeremiah Moshesh had fought for the Cape Colony Government against the Basutos in the war prior to the retrocession of Basutoland to the British Government.

11. Mr. Marwick added that a Bill to deal with the voting powers and representation of the coloured community (as distinct from the native community) had been postponed. An entirely impracticable Bill had been drafted at one stage, in which it was sought to distinguish between different coloured persons by their shade of colour, and these proposals had been shelved.

12. Mr. Marwick ended, as he had begun, by justifying these disclosures and his conversation on the ground that to transfer the Territories to the Union, with its present sovereign independence and constitutional freedom, on the basis of safeguards which were regarded as adequate in the constitutional relationships of 1909, would mean a grave injustice to the natives. Transfer under the present constitutional position would amount to a betrayal of trust towards the natives, who might think themselves safeguarded but were, in fact, incapable of grasping the conceptions of independent status enjoyed by the Union Government and all that it implied. The natives, said Mr. Marwick, were not receiving justice, as an examination over any period of the number of native deaths caused by gunshot wounds or from other violence in which the European causing the death escaped entirely unpunished would amply illustrate. He felt confident that addresses from both Houses praying for the incorporation of the Territories would be rushed through before the Prime Minister left for England. It could not be said with any certainty that the Bills would be published. A good deal depended on the

domestic political situation, for a by-election was pending at East London, where the native vote was of value. He regarded Colonel Reitz's speech to the Imperial Press Conference on the 4th March as confirmatory evidence that the business of transfer would be pressed strongly in the near future.

13. It is worth noting that for the carrying of joint addresses asking for the transfer of the Territories, the Party Whips could apparently be put on; but for the passage of Native Bills they could not. Under section 6 (*b*) of the programme of Fusion " It is recognized that a solution of the political aspect of this question, on the basis of separate representation of Europeans and natives, or otherwise, being fundamental in character, and not having hitherto been a matter of party division should, as far as possible, be sought through agreement and should be left to the free exercise of the discretion of the individual members representing the Party in Parliament." This has a direct bearing on General Smuts's reported declaration that he will vote against the abolition of the Cape native franchise, see paragraph 8 above.

P. LIESCHING.

5th March, 1935.

10991/108. No. 15A.

ADDENDUM TO DOMINIONS OFFICE MEMORANDUM ON TRANSFER*.

(Confidential.)

Since the foregoing was written the following developments have occurred.

(*a*) On the 6th November, 1934, General Smuts at a dinner given in his honour in London, made a speech in the course of which he urged that the early transfer of the Territories was advisable in order to avoid the danger of an agitation in the Union for treating them as " foreign territories " with a view to excluding their exports from the Union market and also in order to avoid all possible sources of friction between the United Kingdom and the Union Governments. The Secretary of State replied that he knew that General Smuts would not expect him to reply to these references to what had rightly been described as a matter that deeply concerned South Africa at the moment.

(*b*) In March, 1935, the High Commissioner for the Territories, Sir William Clark, had two separate conversations with General Hertzog and General Smuts respectively on the subject of transfer. The general impression left by these conversations was that both General Hertzog and General Smuts were rather embarrassed by the situation which they had helped to create. They realized that it would not be judicious to press the matter unduly, but they were genuinely anxious lest pressure should be brought upon them by their supporters and especially pressure by the farmers. In these circumstances, it seemed unlikely that General Hertzog would be content during his forthcoming discussion with the Secretary of State, which he asked the High Commissioner to arrange, to limit himself to the question of the possibilities of closer co-operation between the Territories Administration and the Union Government, unless it could be shown that such co-operation would represent an advance towards transfer. General Hertzog himself said that he would be satisfied if the United Kingdom Government would undertake to transfer the Territories to the Union within a specified period. General Smuts, on the other hand, did not think that such a request would be reasonable, but seemed to want " something " to be said to General Hertzog which would indicate some relaxation of what he regards as a certain rigidity in the United Kingdom Government's attitude on the question. He did not formulate his views more precisely or make any definite suggestion as to what that " something " should be.

(*c*) On the 27th March, the Southern Rhodesia Government sent a despatch† to the Secretary of State stating that, in view of Press reports that a claim was being made by the Union Government for the transfer of the Territories, they wished to notify the willingness of Southern Rhodesia to undertake the administration of the entire Bechuanaland Protectorate, or alternatively, should this be considered inexpedient, of at least the northern part of the Protectorate. The despatch added that in either event the Southern Rhodesia Government would be prepared to agree to the amendment of the Constitution Letters Patent in such a way as to guarantee complete absence of Customs barriers or fiscal differentiation

* No. 9 † No. 16.

between the Territory so transferred and Southern Rhodesia, and that they would also agree to any restrictions on the legislative or executive powers of the Government over the Territory so transferred which the Secretary of State might think desirable for the protection of the native reserves and the interests of the native inhabitants of the Territory.

With regard to the last paragraph of the Dominions Office memorandum of October, 1934, as to the financial assistance which the Territories have received and are receiving from United Kingdom funds, the position up to the end of last financial year, i.e., the 31st March, 1935, was as follows:—

	United Kingdom Exchequer.	*Colonial Development Fund.*
Basutoland	Nil.	Nil.
Bechuanaland Protectorate	£275,000	*£40,000
Swaziland	£228,000	*£61,000

Further provision has been made for assistance from the United Kingdom Exchequer during the 1935–6 financial year amounting to £85,000 in the case of the Bechuanaland Protectorate and £48,000 in the case of Swaziland, making a total assistance of £360,000 and £276,000 respectively. In addition an application for £25,000 from the Colonial Development Fund for water development in the Bechuanaland Protectorate has recently been approved, raising the total Colonial Development Fund assistance approved for the Protectorate to £65,000.

DOMINIONS OFFICE,
April, 1935.

10991/225. No. 16.

DESPATCH

from

SOUTHERN RHODESIA GOVERNMENT.

(Received 5th April, 1935.)

[*Answered by No. 32.*]

(No. 87.)

SIR, Salisbury, Southern Rhodesia, 27th March, 1935.

I have the honour to transmit to you the enclosed copy of a minute in which my Ministers refer to the apprehension felt in this Colony lest the administration of the Bechuanaland Protectorate should be transferred to His Majesty's Government in the Union of South Africa, and ask me to notify to you the willingness of the Government of Southern Rhodesia to undertake the administration of that Territory (or, at the least, of the northern portion of it) subject to Constitutional safeguards for the complete absence of any Customs barriers or fiscal differentiation between the Colony and the territory so transferred, and for the protection of the Reserves and the interests of the natives who would be affected by such transfer.

2. I have the honour to submit this notification to you.

I have, &c.,
H. J. STANLEY,
Governor.

Enclosure in No. 16.

MINUTE.

26th March, 1935.

In view of Press reports that a claim is now being made by His Majesty's Government in the Union of South Africa for the Administration of the High Commission Territories in South Africa to be transferred to their control, and the apprehension which is felt in this Colony lest their request should be acceded to in respect of the Bechuanaland Protectorate, Ministers have the honour to submit that His Excellency the Governor may be pleased to notify the Secretary of State that this Government is willing to undertake the administration of the Bechuanaland Protectorate.

* The above figures represent assistance approved up to the present. The amounts actually spent by the Bechuanaland Protectorate and Swaziland are £13,700 and £33,400 respectively.

Should the Secretary of State consider it inexpedient to transfer the administration of the entire Protectorate to this Government, Ministers would urge the transfer to the Colony of Southern Rhodesia of the administration of at the least that portion of the Protectorate lying north of a line running from the Limpopo along the northern boundary of the Bakgatla Reserve and the southern boundary of the Bamangwato Reserve westward to the north-west corner of the Bakwena Reserve and thence along the former common boundary of the Northern and Southern Protectorates to the eastern border of South-West Africa.

Ministers beg to inform His Excellency, that should the Secretary of State agree to the transfer of the whole or part of the Bechuanaland Protectorate to this Colony, they would agree to the amendment of " The Southern Rhodesia Constitution Letters Patent, 1923 ", in such a way as to guarantee complete absence of Customs barriers or fiscal differentiation between the territory so transferred and this Colony, and they would further agree to any restrictions on the legislative or executive powers of this Government over the territory so transferred which the Secretary of State might think desirable for the protection of the Native Reserves and the interests of the native inhabitants of that territory.

G. MARTIN HUGGINS.

10991/227S.

No. 17.

DESPATCH

from

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received 15th April, 1935.)

(No. 211, secret.)

Cape Town, 30th March, 1935.

SIR,

With reference to my secret despatch No. 149 of the 11th March* forwarding a memorandum of a talk which I had had with General Hertzog on the subject of the transfer of the High Commission Territories, I now have the honour to forward to you a memorandum of a conversation on the same topic with General Smuts.

2. It will be seen that General Smuts's views were not very precisely formulated but that what he would like to see is some relaxation of what he regards as a certain rigidity in His Majesty's Government's attitude on the question. The truth is, I think, that both he and General Hertzog are rather embarrassed by the situation which they have helped to create. They realize that it would not be judicious to press the matter unduly, but they are genuinely anxious lest pressure should be brought upon them by their supporters, and especially pressure from the farmers. It is not altogether an answer to the latter to cite section 17 of the Schedule to the South Africa Act. They can reply that since His Majesty's Government in the United Kingdom show no signs of being prepared to transfer the Territories, they want their Government to act as they would act towards any other countries outside of the Union's borders; and if, on the other hand, transfer were likely to take place, they would probably not be particularly troubled about the prospect of its implying any excessive influx of cattle into the Union. Experience shows that veterinary regulations can easily be employed as a barrier against cattle from native areas and the wording of section 17 would not appear to preclude the imposition of drastic quotas under the Meat Control Act. These are, in fact, being applied already to Swaziland and Bechuanaland despite the Customs Agreement, and I am now in communication with the Minister of Agriculture in an endeavour to get a more equitable provision than that which is at present in force.

3. In these circumstances I am afraid General Hertzog will not be content to limit himself to discussion of possibilities of closer co-operation between our Administrations and the Union Government unless it can be shown that such co-operation represents an advance towards transfer. On the other hand, I do not think that he will threaten any drastic action on the part of his Government, though there is always the danger that in making a public speech he may, as on other occasions, be carried away and may give vent to some injudicious utterance.

I have, &c.,

W. H. CLARK,

High Commissioner.

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* No. 14.

22

Enclosure in No. 17.

MEMORANDUM OF A TALK WITH GENERAL SMUTS ABOUT THE TERRITORIES.

In view of my talk* three weeks ago with the Prime Minister, I thought it would be useful to secure General Smuts's views on the question of the transfer issue as it now stands, and I took advantage of meeting him at the luncheon at which Mr. Lionel Curtis spoke, to ask whether I could come to see him some day this week. He agreed readily and I eventually went to see him at the House of Assembly on the afternoon of Thursday, 28th March.

2. I referred to my talk with the Prime Minister and said that it would be helpful to me if he could tell me what he (General Smuts) had in mind about the situation. I gathered that the Prime Minister did not wish to press the matter unduly at the moment and I explained that the Secretary of State would prefer to limit the present discussion to consideration of establishing closer association and co-operation between the Union Government and our Administrations.

3. General Smuts said that like the Prime Minister he did not wish to press His Majesty's Government unduly, but he did hope that it might be possible for the Secretary of State to give the Prime Minister some indication that the British Government would be able before long to make some movement towards transfer. He could not help feeling that our present attitude was somewhat unyielding and this might create difficulties for the Union Government. He personally rather wished that the question had never been raised, but when it was sprung on the Prime Minister during the debate on his Estimates in April, 1934, he, the Prime Minister, was led into saying more than was necessary and, probably, more than he intended when he got up. Now that the issue had been brought forward, his (General Smuts's) principal anxiety was in respect of the South African farmers. They were a very powerful political force as had recently been illustrated by their success in forcing the Government to take up an attitude about Southern Rhodesia which they had been very reluctant to adopt. In the same way the farmers might at any time bring powerful pressure to bear upon the Government to exclude cattle and other produce from the Territories.

4. I pointed out, of course, that if the Territories were handed over, the same cattle and produce would have to be accorded free admission, to which General Smuts replied that if the Territories were part of the Union the farmer would accept the admission of their produce as a matter of course. (I am afraid the real answer is that the farmer would still feel fairly confident that other means would be found, through veterinary regulations or through quotas under the Meat Control Act, to prevent any unduly generous influx of cattle from native areas.)

5. Generally speaking, General Smuts's attitude was that the Government wanted to be forearmed against pressure which might be brought to bear upon them to take drastic action against the Territories, and that for this purpose it was important that they should have some indication that His Majesty's Government would not be altogether unyielding on the subject. He recognized the strength of public opinion in the United Kingdom and the embarrassment which it would cause to our Government, especially with a general election drawing near, but he felt that something more was wanted than discussion of improved methods of co-operation between the Union Government Departments and our Administrations. He did not think that it would be reasonable to ask for a fixed period within which the Territories should be handed over as the Prime Minister had suggested, and in fact was not at all precise as to what he did want. It really amounted to this that he wanted " something " said to the Prime Minister which would indicate some departure from His Majesty's Government's present attitude on the matter. I pointed out that this was an extremely difficult requirement and there the matter was left.

6. I mentioned that the Prime Minister had told me that he hoped to get the Native Bills out of Committee and to have them made public before he left for England, and I asked whether this was now likely to be achieved. General Smuts said that there had been some difficulties in the last few days, but he hoped they had been smoothed over, and that it would be possible to get the Bills produced, though of course they would not be proceeded with during the current session. He went on to describe the proposals for the future political representation of the natives. The natives at present possessing the Cape franchise will not be deprived of it, but there will be no additions to the register: in other words, it is only a matter of time before no native will have a vote. The coloured population's rights will not be affected. On the other hand, there

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* *See* No. 14.

are to be four additional members of the Senate, of course, Europeans, to be elected by certain native organizations throughout the Union. A Native Council is also to be created which, as I have reported before, will have initiatory and advisory powers and will be allowed to express its views on all measures before Parliament affecting native interests. This Council will be elective.

W. H. CLARK.

28th March, 1935.

10991/233. No. 18.

AIDE-MÉMOIRE HANDED TO GENERAL HERTZOG BY MR. THOMAS ON 15TH MAY, 1935.

We are pledged to Parliament here that the transfer of the High Commission Territories should not take place:—

(*a*) until the inhabitants, Native as well as European, have been consulted, and

(*b*) until Parliament has been given an opportunity of expressing its views.

These pledges were given during the passage through Parliament of the South Africa Bill, and have been several times repeated since. Their nature is set out in some detail in a memorandum handed to General Smuts in July, 1933.

2. It has been explained in the previous exchange of letters with General Hertzog that we do not regard the time as ripe for consulting the inhabitants under the first of the above-mentioned pledges. All our information goes to show that at present native opinion in the Territories is very strongly opposed to transfer. In these circumstances it appears to us that the results of such consultation would be embarrassing and undesirable from every point of view. We believe that the Union Government, in the words used by General Hertzog in March, 1925, would not wish to incorporate the Territories in the Union unless the inhabitants of the Territories, Native as well as European, "are prepared and desire to come in".

3. We do not wish to suggest that the principles underlying Section 151 of the South Africa Act have been affected except in so far as the establishment of Southern Rhodesia as a self-governing Colony has a bearing on the future of at any rate part of the Bechuanaland Protectorate. It will be appreciated, however, that the provisions of the Schedule to the Act would have to be re-examined in the light of the general constitutional developments since the Act was passed. The provisions requiring special consideration in this connexion were mentioned in the memorandum handed to General Smuts, which is referred to above.

4. The conclusion which we draw from the above considerations is that the policy of both Governments for the next few years should be directed to bringing about a situation in which, if transfer were to become a matter of practical politics, it could be effected with the full acquiescence of the populations concerned. With this end in view we feel it important that the closest possible co-operation should be established between the Union Government and the Administrations of the Territories. We realize, of course, that some measure of co-operation already exists; but we feel that there are many directions in which it could be fruitfully extended. In particular it appears to us to be an essential condition of the success of such a policy that the native population should feel that the Union Government are working in concert with the local Administrations with a real and generous desire to develop and improve conditions in the Territories.

5. We would very gladly consider sympathetically any proposals which the Union Government may feel able to make as to further practical steps which could be taken for promoting co-operation on these lines with the Administrations of the three Territories.

May, 1935.

23

10991/234. No. 19.

MR. J. H. THOMAS (SECRETARY OF STATE FOR DOMINION AFFAIRS)

to

SIR WILLIAM CLARK (HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND).

MY DEAR HIGH COMMISSIONER, Downing Street, S.W.1, 21st May, 1935.

General Hertzog, accompanied by Mr. Duncan, came to see me on the 14th May, to discuss the future of the High Commission Territories.

General Hertzog began by saying that he had been both surprised and pained by statements which had appeared in the Press to the effect that one of the objects of his visit to this country was to demand the taking over of the Territories by the Union. He had no intention of adopting any such attitude. He was well aware of the pledges which we had given both to consult the natives and to afford an opportunity to Parliament to express its opinion; and he did not question that we were bound by those pledges.

On the other hand, it seemed to him to be inevitable that the Territories should one day form part of the Union: their present position raised questions, especially economic questions, to which amalgamation with the Union, at some date, was the only satisfactory answer.

I replied that I much appreciated the manner in which General Hertzog had approached the question. I went on to say that it seemed to me that, if transfer were ever to take place, and whether it took place by stages or not, the essential preliminary was that the good-will of the natives towards the Union Government and towards Union policy should be won, so that, if possible, the natives should be got to look upon transfer as being in their own interests. It seemed to me that the best method of achieving this end would be to work out methods of co-operation, the closer the better, between the Union Government and the Administrations of the Territories over as wide a field as possible, and in particular in all matters relating to the economic welfare and development of the Territories.

General Hertzog indicated that he agreed with this view. He suggested that I should invite you, in consultation with the Resident Commissioners, to help in the direction I had suggested.

I undertook to inform you of the discussion, and promised to press upon you the desirability of having as comprehensive a scheme of co-operation as possible worked out. I mentioned that I thought that it would be very desirable that you should have a further talk with General Hertzog as soon as possible after his return. I added that I was sure that the right policy, especially in dealing with chiefs and their followers, was to discourage agitation against joining the Union and to concentrate on getting everyone, natives and Europeans alike, to work for the success of such co-operative measures as might be found possible. It seemed to me that this was the best way of creating the right atmosphere. General Hertzog concurred.

At the end of our discussion I handed to General Hertzog the *aide-mémoire**, of which I enclose a copy. General Hertzog read it, and I gathered that he was in general accord with the conclusion reached in it.

I have shown this letter to General Hertzog.

Yours, &c.,

J. H. THOMAS.

10991/234. No. 20.

HOUSE OF COMMONS.

EXTRACT FROM OFFICIAL REPORT OF 23RD MAY, 1935.

South Africa (High Commission Territories).

MR. LUNN (*by Private Notice*) asked the Secretary of State for Dominion Affairs whether any discussions have taken place with the Prime Minister of the Union of South Africa on the subject of the High Commission Territories, and, if so, what has been the outcome of those discussions?

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* Cmd. 4948.

MR. J. H. THOMAS: Yes, Sir. The future of the High Commission Territories has been fully discussed between General Hertzog and myself in the light of the provisions of Section 151 of the South Africa Act, 1909, of the pledges given by His Majesty's Government in the United Kingdom during the passage of that Act and subsequently, and of constitutional developments during the last few years. As a result of our discussions it has been agreed that the best policy to pursue in present circumstances is to extend co-operation between the Union Government and the Administration of the Territories over as wide a field as possible, and in particular in all matters relating to the economic welfare and development of the Territories. A communication in this sense has been addressed to the High Commissioner by me.

MR. LUNN: Will the right hon. Gentleman define what is meant by extending co-operation between the Union Government and the High Commission Territories?

MR. THOMAS: In view of the controversy in South Africa and in this country, I am sure the House will welcome this statement as an indication on the part of the South African Government that they realize the difficulties, and equally as a contribution on our part to the realization of their problems. Boiled down, it means that if there is friction between the Union Government and the Territories and there is ill-will both sides suffer, and the arrangement we have made is that there shall be the closest co-operation between the Territories and the Union, so that if at any time a change takes place it will be with the good-will and co-operation of all parties instead of the hostility which would otherwise be there.

10991/235. No. 21.

EXTRACT FROM SPEECH BY GENERAL HERTZOG AT THE SOUTH AFRICA CLUB DINNER ON 23RD MAY, 1935.

* * * * *

In the matter of the Native Protectorates, General Hertzog continued, I am happy to say an understanding has been arrived at with the Dominions Secretary, which, I am sure, will within reasonable time create the conditions which will enable effect to be given to the intention of the Schedule to the South Africa Act in a manner satisfactory to all concerned. Mr. Thomas and myself having agreed that the South Africa Act, with its Schedule about the transfer of those Territories to the Union, has a meaning and intention, have at the same time felt that, before effect can be given thereto, there are certain conditions precedent which have to be complied with.

We have consequently agreed that we shall, in a spirit of mutual helpfulness and friendly co-operation, assist in bringing about the conditions and circumstances under which effect can be given to the Schedule, subject to such revision as may be mutually agreed upon. I feel very grateful to say that nothing could have been more convincing of good will, and that nothing can be more conducive to good feeling and hearty co-operation, than the open-hearted readiness with which again, in this instance, the desires of the Union have been responded to by His Majesty's Ministers here. I wish to assure my good friend, Mr. Thomas, and his colleagues of my very hearty appreciation.

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10991/225. No. 22.

DESPATCH

to

SOUTHERN RHODESIA GOVERNMENT.

(No. 180.)

Downing Street, S.W.1, 6th June, 1935.

SIR,

I have the honour to acknowledge the receipt of your despatch No. 87 of the 27th March*, forwarding a copy of a minute from your Ministers notifying the willingness of the Government of Southern Rhodesia to undertake the administration of the Bechuanaland Protectorate (or at least of the northern portion of it) and indicating their readiness to agree to certain constitutional safeguards in connexion with such transfer.

* No. 16.

2. I have noted with interest the views expressed in the minute enclosed in your despatch. Your Ministers will, however, appreciate the position of the Union of South Africa in the matter, particularly in view of the terms of section 151 of the South Africa Act of 1909, and I enclose for their information an extract* from the report of the debates in the House of Commons on the 23rd May, containing statements which I made regarding the discussions which I have recently held with the Prime Minister of the Union of South Africa on the subject of the future of the High Commission Territories. Your Ministers may be assured that their views will not be overlooked in connexion with future developments as to the position of the Bechuanaland Protectorate.

I have, &c.,

J. H. THOMAS.

10991/244. No. 23.

TELEGRAM

to

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Sent 4.15 p.m., 17th June, 1935.)

[*Answered by No. 24.*]

No. 111. Please let General Hertzog know that in view of mischief-making statements here as to result of our conversations regarding future of High Commission Territories, I think it would be desirable to make public Memorandum which I handed to him at end of our talk on 14th May (i.e., Memorandum of which a copy was enclosed in my letter to you of 21st May†). Suitable opportunity will occur in House of Commons this week since Dominions Office Vote is being discussed on 20th June. I propose therefore to take this occasion to read out the Memorandum.

10991/245. No. 24.

TELEGRAM

from

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received 4.15 p.m., 19th June, 1935.)

No. 125. 19th June. Your telegram No. 111 of the 17th June‡. I have seen the Prime Minister who has no objection to publication of Memorandum handed to him on 14th May. We also had some talk on co-operation and it was arranged that I should submit suggestions next week to Stutterford acting Minister of Native Affairs who will then be in Pretoria. Prime Minister intimated that he was prepared to contemplate financial contribution to measures of development in the Territories provided that we (corrupt group) making the Union's share known to the natives. I am considering the possibilities with which to make a beginning and will report progress.

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* Not reprinted. † No. 19. ‡ No. 23.

10991/262.

No. 25.

DESPATCH

from

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received 11th July, 1935.)

(No. 411, confidential.)

Pretoria, 1st July, 1935.

SIR,

With reference to my telegram No. 125 of the 19th June*, I have the honour to report that I had a conference to-day with Mr. Stuttaford, Acting Minister for Native Affairs, on the subject of closer co-operation between the Union and the Territories. Mr. Priestman, my Administrative Secretary, and Mr. Smit, Secretary for Native Affairs, were also present. I took with me an *aide-mémoire* which I had had prepared setting out our ideas and suggestions on the subject. A copy of the *aide-mémoire* is attached.

2. Mr. Stuttaford asked me to open the discussion. I briefly rehearsed the aims and objects of the agreement reached between yourself and General Hertzog and said that we had been studying the question with a view to suggesting heads under which the Union Government might co-operate with the Administrations of the Territories. In compiling our list of suggestions I had borne in mind that the special object was to impress the natives of the Territories with the good will borne to them by the Union. It was necessary therefore to include among our proposals the removal of certain grievances under which the Territories laboured. I also added that, if I had ventured to include proposals which might seem to suggest considerable financial contributions by the Union Government, it was because General Hertzog had expressly invited me to do so.

3. We then went through the *aide-mémoire*, but the discussion on its various heads was necessarily general, more especially as most of the items concerned the Department of Agriculture rather than the Department of Native Affairs. Mr. Stuttaford showed throughout a most sympathetic attitude, but of course made it clear that before carrying matters further he would have to consult with General Smuts, who is acting as Minister of Agriculture in the absence of Colonel Reitz. He also thought that it would be necessary that the whole subject should be discussed in the Cabinet before he or General Smuts examined particular suggestions with me in greater detail. It was therefore left that I should supply him with additional copies of the *aide-mémoire* and he would communicate with me further on my return from Swaziland in a fortnight from to-day.

4. I should perhaps add that I have already had evidence of the working of the new spirit. Major Reilly, Acting Resident Commissioner in the Bechuanaland Protectorate, and Mr. Hobday, the Chief Veterinary Officer, were here at the end of last week in order to discuss with officers of the Department of Agriculture the removal of some remnants of the veterinary restrictions imposed during the outbreak of foot-and-mouth disease. Mr. Priestman participated in the discussion, and I had paved the way by a talk with General Smuts. In the result their requirements were all met with a readiness to which I am afraid we have not been altogether accustomed in the past—indeed some of these requests had been turned down only a fortnight before—and facilities which had hitherto been refused are to be provided for the transit of cattle from the Protectorate to Durban, where there is a good possibility at the moment of obtaining a market for a considerable consignment.

I have, &c.,

W. H. CLARK,

High Commissioner.

Enclosure in No. 25.

Aide-mémoire.

SUGGESTIONS FOR IMPROVED CO-OPERATION BETWEEN THE UNION AND THE HIGH COMMISSION TERRITORIES.

The object of the closer co-operation which is now envisaged is to secure, in the language of the *aide-mémoire* submitted to the Prime Minister by Mr. Thomas, that "the native population should feel that the Union Government are working in concert

* No. 24.

with the local Administrations with a real and generous desire to develop and improve conditions in the Territories". It is recognized that, in many matters of common concern, effective contacts already exist between Government Departments in the Union and the Administrations of the Territories. In this memorandum an endeavour is made to suggest new openings for co-operation and lines on which yet closer working between the Administrations and Union Government Departments may usefully be sought. Bearing in mind the object in view, it has also been necessary to refer to certain grievances whose removal would undoubtedly have an excellent effect upon native opinion in the Territories. It will then be the duty of officials in the Territories to expound to the chiefs and peoples the extent of the benefits which they may be receiving through the good will of the Union.

I.—*Matters in which co-operation between the Union and Territories might be extended.*

A.

Agriculture obviously offers an important field for co-operation, because in many branches of agriculture the Territories have the same interests and are concerned with the same problems as the Union. A special opportunity, it is suggested, is afforded by the fact that, in respect of certain classes of produce in which the Territories are interested as well as the Union, the Union Government have assumed under recent legislation extensive powers of control. Control Boards have been set up for the dairy, maize, meat, and tobacco industries, and a Board, it is understood, is about to be constituted for wheat. The Territories are represented on the Dairy Control Board but not on the Control Boards for meat, maize, or tobacco. It is suggested that they should be given representation on these latter and on the Wheat Control Board when it is constituted. In this way the interests of the Territories would be represented at first hand and a sense of grievance would be removed which is felt by many of the inhabitants. Such representation would ensure that the Territories would be kept fully informed of the principles applied in the allocation of quotas and would have a voice in such allocation, whereas at present, for example, there is considerable dissatisfaction in Swaziland about their cattle quota. It is recognized that Bechuanaland has received a generous quota, but in present conditions any increase which could be provided would be extremely helpful to cattle-owners in the Protectorate, the bulk of whom of course are natives, in view of the exceptionally heavy stocks which they have in hand. Representation of the Territories would also mean that the Union authorities would have constantly at their disposal a reliable source of information regarding production, etc., in the Territories of the commodities concerned.

A further reason for such representation is that levies are imposed, or are likely to be imposed, under the Acts, on produce of the Territories. Under the Union Livestock and Meat Industries Control Act, a levy of 2*s.* per head on all cattle slaughtered for sale has been imposed. The proceeds of this levy may be utilized for the payment of bounties on exported meat or to assist the development and betterment of the livestock and meat industries. Similar levies, it is understood, are contemplated under the Wheat Industry Control Act and the Tobacco Industry Control Act. In the case of cattle or other produce of the Territories which may be sold in the Union, the ultimate incidence of these levies is on the producers in the Territories, and it is submitted that they should receive from such payments corresponding benefits to those accorded to producers in the Union. The question of a refund of a portion of the meat levy paid by producers in the Territories has been raised but no decision has yet been communicated to the High Commissioner. If the Territories' share of the levy could be refunded to be used for objects similar to those for which the levy funds are used in the Union, it would be greatly appreciated by the producers in the Territories, who are faced with the same difficulties as Union producers.

B.

Basutoland is an important producer of wheat and, owing to its climatic conditions, it can grow what is known as "strong wheat." The Union does not produce enough of this type of wheat for its requirements and it has been suggested that the Union Government might assist in the development of the cultivation of strong wheat in Basutoland, which the local Administration is anxious to promote, by encouraging the use of Basutoland hard wheat in the Union and facilitating its distribution to millers in the Union, and by assisting in the research work which is required.

C.

A specially low railway rate has been granted over the South African Railways for chilled meat from Southern Rhodesia under the recently concluded agreement with that country. It would be appreciated if corresponding rates could be conceded to meat from the Bechuanaland Protectorate and also from Swaziland.

D.

The various Union Government Departments which are concerned with agriculture have in the past been most helpful in giving advice and assistance to the Territories and in lending specialist officers when required. This co-operation might be still further extended and it might be considered whether arrangements could be made for the secondment to the Territories, without charge, of officers of special qualifications for development and other work such as water-boring, irrigation, and erosion.

Extensive schemes of development are now being undertaken or are in contemplation in the Territories. £25,000 has been provided by the British Government out of the Colonial Development Fund for the provision of water supplies in the Bechuanaland Protectorate, but this sum will enable only a beginning to be made. An important project is now under consideration for clearing the waterways of the Okavango Delta in which the waters of that great river are now dissipated and largely lost. It is hoped that it may be possible by these means to bring the permanent flow down the Botletle River to Rakops or even further.

As regards Basutoland, an elaborate scheme has been drawn up for combating erosion and is now under consideration. The contemplated expenditure would amount to some £150,000. This is a matter in which the Union is closely interested, since the effects of erosion in Basutoland have their reactions across the border. The Union might care to consider participation in these schemes either by financial aid or by the loan of personnel and equipment (engineers, boring machinery, etc.).

In the sphere of agricultural research there are probably a number of subjects in which the Union research staff could afford valuable assistance. An example which suggests itself is the study of improvement in pasturage grasses which is now being taken up in the Territories. A further field for co-operation exists on the veterinary side in problems of stock breeding and selection. In general, close co-operation between the respective Agricultural and Veterinary Departments of the Union and of the Territories should be maintained, alike for development work and for dealing with pests and disease. As regards these latter, it has always been the practice of the Administrations in the Territories to maintain the closest contacts with the Union authorities, and they will be glad in such matters to continue to work with the Union Departments in all practicable ways.

E.

Should the Union contemplate the provision of direct financial assistance apart from agriculture, specific schemes of benefaction in native reserves which would be likely to influence native opinion favourably could be suggested, e.g., construction of hospitals, dispensaries, roads, bridges, and possibly schools. Grants might be made in respect of roads and bridges utilized by Union railway motor services in the Territories, and roads and bridges giving access to the Territories might be maintained in good condition by the Union to facilitate tourist traffic. An aerial survey of Ngamiland might be provided.

F.

As has already been suggested in respect of agriculture and veterinary work, there is also ample scope for concerted action in the sphere of sanitary and medical administration. The Territories and the Union are jointly concerned in the adoption of preventive measures against epidemics and in the provision of institutional treatment for natives suffering from tuberculosis, leprosy, and other diseases which are, or have become, endemic in South Africa.

G.

As regards administration generally, it will probably be agreed that it is desirable that the Native Affairs Department of the Union should be fully informed as to policy and practice in the Territories, and similarly that the officers of the High Commission should be fully informed as to methods pursued by the Native Affairs Department in the Union. Facilities for studying each other's administrative methods should therefore be readily furnished on either side. Assimilation of administrative methods, so far as may prove practicable, is one of the factors which will help to smooth the way for eventual transfer.

A tour was recently arranged to enable a number of Basutoland chiefs to inspect soil erosion works in the Union. Facilities were readily afforded by the Union authorities, with the result that the visit was a notable success. The Union Government might care to consider the possibility of arranging for other visits of the kind to the Union.

II.—*Matters upon which it is felt that more sympathetic treatment might be accorded by the Union.*

A.

The Customs Convention between the Territories and the Union provides for free interchange of South African products and manufactures between the Union and the Territories. This provision has been strictly observed by the Territories, but it has been departed from by the Union, especially in the case of slaughtered cattle. Importation of such cattle is prohibited unless they exceed in weight:—

	Oxen.	*Cows.*
	lb.	lb.
From Bechuanaland Protectorate	1,000	750
,, Basutoland (not actually in force) ...	800	800
,, Swaziland	800	800

It can safely be asserted that no gesture of co-operation would be so effective in the eyes of the natives of the Territories as the removal of these restrictions. It is appreciated, however, that complete removal might present difficulties as the restrictions have now been in force for some years, and it is also recognized that the restrictions have in one respect proved of utility to the Territories, since they have tended to raise and maintain at a higher level the quality of their cattle. It is not therefore proposed to ask that the restrictions should be withdrawn immediately, but it is suggested that the discrimination against Bechuanaland oxen should be removed and the former weight-limit of 800 lb. restored. As regards Basutoland, it is understood that the Department of Agriculture is considering putting the weight-restriction into operation. At this particular juncture such action would, of course, be peculiarly unfortunate.

The Union Railway-bus service which operates in Swaziland charges a relatively higher rate over the Stegi-Mbabane route than over the Gollel-Mbabane route. This operates in favour of Durban as against Lourenço Marques, thus raising costs against the Swaziland importer for the benefit of the Union Railways. It is suggested that rates should be equalized.

B.

Veterinary Restrictions.

Basutoland.—Sheep from Basutoland may not enter the Union unless dipped twice, which causes loss of weight and spoils the wool. This restriction was imposed on account of scab, from which disease Basutoland has been completely free for two years, and it is suggested that it should now be rescinded.

Bechuanaland Protectorate.—Nearly all of the restrictions imposed on account of foot-and-mouth disease have now been removed. Reference should be made, however, to the shooting of cattle which stray across the border. This is still going on and causes much local irritation. It is suggested that some less drastic method, such as pounding, might be adopted by the Union police.

Swaziland.—Slaughter stock for Johannesburg may only be exported via Komatipoort in the north, involving a long trek by road and consequent loss of condition. An application to send stock by the Railway-bus service to Breyten for railing was refused. It is suggested that this ruling might be reconsidered and that a port of exit in the south should be approved. Certain farmers are permitted to quarantine cattle on their own farms, whereas this privilege has been refused to others who have fulfilled the conditions regarding fencing and dipping. It is suggested that this refusal might be reconsidered and that all areas which have been clear of East Coast fever for a period of three or more years should, as in the case of the Transkei, not be subjected to quarantine restrictions. The fee of 1*s.* 6*d.* a head imposed on cattle exported to Johannesburg to cover the cost of veterinary supervision by the Union Government is considered excessive.

III.—*Contribution to co-operation by the Administrations of the Territories.*

It would seem that the most substantial contribution to a growing sense of co-operation which could be made by the Administrations of the Territories would be by instructing their officers to bring home to the chiefs and peoples, as and when assistance is afforded or grievances removed as suggested in the foregoing paragraphs, the extent of their debt to the Union. The High Commissioner would gladly undertake to issue instructions to the Resident Commissioners in this sense.

High Commissioner's Office,
Pretoria,
July, 1935.

10991/269. No. 26.

DESPATCH

from

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received 2nd September, 1935.)

(No. 512.)

Pretoria, 23rd August, 1935.

SIR,

With reference to previous correspondence on the subject of closer co-operation between the Union Government and the Administrations of the High Commission Territories, I have the honour to transmit herewith a copy of a note of the discussions at a meeting which I had with Dr. P. R. Viljoen, Secretary of the Union Department of Agriculture, on Monday the 19th August, at which the Administrative Secretary, Mr. H. E. Priestman, was also present.

2. I also took the opportunity when seeing the Prime Minister about other matters on the same day to raise the question of co-operation and he expressed the hope that he would now be able to bring up the subject in Cabinet.

I have, &c.,

W. H. CLARK,

High Commissioner.

Enclosure in No. 26.

NOTE OF A MEETING BETWEEN THE HIGH COMMISSIONER AND DR. P. R. VILJOEN, SECRETARY FOR AGRICULTURE AND FORESTRY, HELD AT UNION BUILDINGS ON MONDAY, THE 19TH AUGUST, 1935, AT 3.15 P.M. MR. H. E. PRIESTMAN WAS PRESENT AT THE MEETING.

The High Commissioner explained that, as he was to have an interview with the Prime Minister that afternoon in the Union Buildings, he had suggested meeting Dr. Viljoen at the same place instead of in the High Commission Office as previously arranged.

Dr. Viljoen stated that he had been requested by General Smuts, the Acting Minister of Agriculture, to see the High Commissioner in order to discuss certain points in the High Commissioner's *aide-mémoire* before the document was considered by the Cabinet.

In section I A of the *aide-mémoire*, representation of the Territories on the Control Boards for meat, maize, tobacco, wheat, etc., was proposed. The difficulty was that these Boards were statutory and the Union Government felt that the time was inopportune for the introduction of amending legislation to give effect to that proposal. His Minister thought therefore of proposing to the Cabinet that, for the time being, arrangements should be made for the Territories to send a representative to be present at meetings of the Boards when matters concerning the Territories were to be discussed if that would meet the High Commissioner's wishes.

The High Commissioner considered that this suggestion would meet the case provided that the question of the disposal of levies paid by the Territories also mentioned in section I A of the *aide-mémoire* could be suitably settled. Dr. Viljoen said that the only levy in force at the present time which was fixed at a rate which would bring in more than would cover the actual cost of administration, was that imposed under the Livestock and Meat Industries Control Act. Of the proceeds of this levy about 25 per cent was required to cover the cost of administration and the remaining 75 per cent was used for subsidies. They took the view that subsidized export of cattle automatically reacted to the benefit of farmers in the Territories by providing them with better local markets. The High Commissioner pointed out that the Union farmer not only got the benefit of subsidized export which was denied to the Territories, but also equal advantage as regards local markets and had not to face quota difficulties like farmers in the Territories.

Dr. Viljoen proposed to reconsider the question whether a proportion of the levy funds contributed by the Territories could not be made available for the benefit of producers in the Territories though any proposal would require legislation.

The High Commissioner thought that legislation providing for the assistance of export of cattle from the Territories to places other than the Union would not be likely to meet with opposition.

As regards section I B, Dr. Viljoen explained that their technical advisers had been requested to go into the question of the proportion of strong wheat required in the Union. They anticipated a surplus crop of soft wheat and were anxious to restrict the importation of Canadian strong wheat and to assist the local production in the Transvaal and Basutoland of such quantities of strong wheat as might be required. On receipt of their experts' opinions they proposed to have a conference with the Basutoland authorities as had already been suggested by the High Commissioner.

As regards section I C, the position was that to assist export of chilled meat from Southern Rhodesia as a *quid pro quo* for advantages for Union products imported into Rhodesia, the Union Government paid to the Railway Administration 50 per cent of the freight which was then refunded as a rebate to the exporter. The Railway rate was in fact unchanged but the Union Government paid 50 per cent of it. He enquired whether the High Commissioner wished to press for this concession or for a refund of part of the levy.

The High Commissioner stated that he wished to press for both concessions as they were not interrelated and there was a good case for each.

On section I D, Dr. Viljoen said that the Union Department of Agriculture was prepared to second officers without charge if they could be spared but there was a shortage of officers. He could not speak about the loan of officers for development work, as this was within the province of the Irrigation Department but he would mention the Okavango irrigation and Basutoland erosion schemes to his Minister.

The Agricultural Department was prepared to assist in research work.

As regards section II A, the Department was proposing that the weight of slaughter cattle should be fixed at 800 lb. for Bechuanaland as well as for the other two Territories, although they anticipated considerable opposition from Union farmers to this concession. Ministers, of course, would have to take into account the possible political reactions.

He was not concerned with the Union Railway-bus rates but this point would be taken up with the Railway Department.

As regards section II B, their Veterinary Department refused to consider any further relaxation of restrictions either as regards dipping of sheep in Basutoland or any of the points proposed in connexion with Swaziland. It was not possible for the Minister to overrule his technical people on these points. The High Commissioner thought that a hint from a Minister might be of great effect. As regards quarantine in Swaziland there was discrimination which could not be upheld on veterinary grounds.

It was agreed that a meeting between the Veterinary Officers of the Union and of the Territories should be arranged in order that the removal of these restrictions should be discussed. The Territories to be notified by telegraph that the Union Veterinary Department would communicate direct as regards arrangements for this conference.

As regards the point in II B relating to the shooting of cattle, Dr. Viljoen said that it was largely a police matter for the prevention of smuggling. It had been suggested to Colonel Rey that police precautions should be increased and that cattle should be branded so that strays and smuggled cattle could at once be identified.

The High Commissioner stated that an alternative such as pounding would solve the difficulty.

Dr. Viljoen said that they would look into the matter again and would welcome any suitable alternative which could be suggested, as they had so far failed to find one.

The High Commissioner promised to consult the Protectorate Administration on this point.

10991/275. No. 27.

TELEGRAM

from

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received 12.30 p.m., 23rd October, 1935.)

No. 175. 23rd October. Prime Minister asked me to see him this morning and told me that the Cabinet yesterday considered by *aide-mémoire* in regard to co-operation in respect of the native territories. He said that Ministers were unanimous that they should go as far as possible to meet us on the point(s) specified and it was arranged (that) (? group omitted) particularly concerned should get into touch with me on the matter within their respective spheres. This looks promising for some clarification of how far the Union Government are in fact prepared to go.

10991/276. No. 28.

DESPATCH

from

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received 11th November, 1935.)

(General.)

(No. 608.)

SIR, High Commissioner's Office, Pretoria, 25th October, 1935.

With reference to my telegram No. 175 of the 23rd October*, I have the honour to enclose herewith a memorandum of a conversation which I had with the Prime Minister on Wednesday, 23rd October. He had invited me to see him in order that he might inform me of the outcome of his Cabinet's consideration of my *aide-mémoire* on co-operation in respect of the Native Territories.

2. As I have reported from time to time, this question has been much delayed owing to the frequent absences of Ministers from the Capital, and it is very satisfactory to find that there is now a prospect of progress being made. I have never had any doubts but that the Prime Minister himself wishes to go the fullest possible distance to meet us on the various methods of co-operation suggested in my *aide-mémoire*, and what he said in our talk certainly implied that his colleagues were nearly, if not quite, as enthusiastic. In this, however, he may quite probably have been somewhat over-optimistic, and we must be prepared for a good many qualifications on the score of political necessities when we get down to actual business: in fact the Prime Minister himself put in a *caveat* that such consideration could not be altogether ignored.

I have, &c.,

W. H. CLARK.

High Commissioner.

Enclosure in No. 28.

MEMORANDUM.

The Prime Minister asked me to call upon him this morning. He told me that he wished to speak to me about co-operation in respect of the Native Territories. The question had been discussed in the Cabinet yesterday. My *aide-mémoire* had been examined and the Prime Minister said he was glad to be able to tell me that his colleagues were unanimous that, so far as was possible, we should be met on the various points specified. It had been further agreed that the Ministers specially concerned, Railways, Agriculture, Interior, and Native Affairs, should place themselves in touch with me on the various matters which came within their respective purviews.

The Prime Minister added that there was one other matter to which perhaps he ought to refer. One of his colleagues had raised the question whether it might not allay anxiety if some statement were made through me to our administrative staffs in the Territories as to their prospects when the Union Government took the Territories over. The Prime Minister said that he did not wish to seem to be rushing things, but he would like me to know that when incorporation took place, the Union Government would be very glad to take over the existing staff without disturbing any of their rights, and he said I was at liberty to inform officers accordingly if I thought fit. I thanked him for his consideration in the matter, but said I thought that for the moment it would be better not to say anything as, after all, we could none of us foretell when the time would in fact be ripe for transfer, and it seemed undesirable in the meantime to do anything which might have a disturbing effect.

I expressed on behalf of His Majesty's Government in the United Kingdom our warm appreciation of the Union Government's desire to co-operate in the development of the Territories and said that I would be entirely at the disposal of Ministers when they were ready to discuss matters in detail.

W. H. CLARK,

23rd October, 1935.

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* No. 27.

10991/277. No. 29.

MR. H. E. PRIESTMAN (OFFICE OF THE HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND)

to

SIR GEOFFREY WHISKARD (DOMINIONS OFFICE).

(Received 21st November, 1935.)

High Commissioner's Office, Pretoria,

DEAR SIR GEOFFREY, 8th November, 1935.

I enclose, for your information, copies of the records of discussions with the Minister of Agriculture and the Minister of the Interior who also deals with Public Health and Education. The outcome of the conversation with the former was disappointing because it transpired that Colonel Reitz had no authority to deal with the question of financial assistance. On the other hand, he informed us that the Minister of Native Affairs had authority to deal with the question of financial aid for the schemes of development mentioned in the *aide-mémoire* furnished to the Union Government by Sir William Clark.

I got into touch with the Secretary for Native Affairs immediately after the interview with Colonel Reitz and arrangements have been made for an interview with his Minister next Tuesday, the 12th of November. The Minister's first re-action was to suggest that the discussion should be postponed until Sir William Clark could be present as questions of high policy would be involved, but I suggested that a preliminary discussion would be of advantage even if it proved necessary to adjourn the meeting in order to ascertain Sir William Clark's views on any questions of policy which might arise. It has been ascertained from Smit, the Secretary for Native Affairs, that the question of high policy is merely a matter of arranging that the Union Government may be in a position to supervise any works to which they make financial contributions. It seems possible to evolve some system which will satisfy the Union and at the same time avoid dual control and if they are prepared to lend us the expert water engineer, who is required for the supervision of the Basutoland erosion and Bechuanaland Protectorate water schemes, the Union would know that the schemes were being carried out on the right lines.

Hofmeyr, like Reitz, was very cordial but made it clear that no financial assistance would be forthcoming in respect of services with which he is concerned.

Yours, &c.,

H. E. PRIESTMAN.

Enclosure in No. 29.

RECORD OF A MEETING HELD AT 11 A.M. ON WEDNESDAY, THE 7TH NOVEMBER, AT UNION BUILDINGS, PRETORIA.

Present:

THE MINISTER OF AGRICULTURE
DR. VILJOEN.
SIR CECIL FFORDE.
MR. H. E. PRIESTMAN.

Colonel Reitz intimated that the Union Cabinet had decided to adopt as far as possible the proposals contained in the *aide-mémoire* prepared by the High Commissioner.

2. As regards representation of the Territories on Control Boards, legislation would be necessary to provide this and the Union Government were reluctant for political reasons to undertake this. He suggested that the difficulty might be overcome by appointing representatives of the Territories in an advisory capacity and if this would meet the case he would be glad to be informed of the names of representatives proposed.

Mr. Priestman considered that this would meet the case and promised to notify the Department of the names of representatives suggested.

3. As regards the refund of levies the only one at present which more than covered expenses of administration was that imposed under the Union Livestock and Meat Industries Control Act and the Minister considered that the Protectorate farmers gained indirect advantages owing to meat exports relieving the local Union markets to which those farmers had access. The Bechuanaland Protectorate also gained through smuggled cattle receiving the benefit of export bounties. It was pointed out to the Minister that Union farmers gained all the indirect benefits from the operation of the bounties and also the direct benefits which did not extend to the Protectorate farmer. Smuggled cattle were

exported by Union farmers and the Bechuanaland Protectorate Government was endeavouring to prevent smuggling. As a matter of principle there seemed no reason why the Protectorates should not have a refund of that portion of the levy which exceeded the cost of administration. The Minister promised to consult the Cabinet again about this question.

4. As regards Basutoland wheat the Union Government had already promised co-operation in research and the matter was in train.

5. The Cabinet were prepared to apply the special railway rates to meat exports from the Bechuanaland Protectorate and Swaziland. This would in effect mean an additional payment to the railways. It was agreed that the Administrative Secretary should furnish the Department with an estimate of the cost to the end of this financial year and for next financial year.

6. The Union Government were prepared to assist as far as possible with research questions and would welcome any suggestions. Mr. Priestman mentioned that pasture research experiments were about to be initiated in the Bechuanaland Protectorate and Swaziland, and enquired if expert advice could be provided without charge to the Territories. Professor Robb had advised as regards the Bechuanaland Protectorate but it was necessary to pay for his services. The Minister thought that Dr. Pole Evans could furnish advice in this direction and agreed that no charge would be made. He would welcome any concrete suggestions and also in regard to any veterinary research matters. The Union would as previously assist in locust measures and were prepared to help in cases of outbreaks of disease such as foot and mouth disease.

7. As regards the specific proposals for development, loan of officers, etc., contributions to erosion in Basutoland, and to water development and the Okavango scheme, the Cabinet had decided to assist financially and also if possible with personnel. They had agreed that these subjects should be dealt with by the Minister for Native Affairs.

8. The Cabinet had been unable to agree to remove or reduce the weight restrictions on cattle. As regards the Bechuanaland Protectorate, the weight limit corresponded to that agreed upon with Southern Rhodesia, and one could not be reduced without affecting the other. The weight restrictions had in effect been beneficial as regards raising the standard of quality of cattle. The lower weight restriction in respect of Swaziland had been imposed as farmers there had gone in for a smaller type of pure bred animal whereas the Bechuanaland Protectorate exported mainly Afrikander stock. There were strong political reasons against any modification of the present conditions.

9. As regards the Swaziland bus service this was a matter for the Minister of Railways but it was understood that the rates had been reduced.

10. As regards the removal of veterinary restrictions the Minister had instructed his Department that he desired all restrictions to be removed save those which it was necessary to maintain on purely veterinary grounds. He understood that in consequence, after discussion between the Veterinary Officers of the Union and of the Territories, many restrictions had been removed and others modified.

Political.

Colonel Reitz said he felt some difficulty as regards the proviso that the consent of the natives must be secured before His Majesty's Government could consent to transfer the administration of the Territories to the Union. He was not clear how it was proposed to ascertain if the peoples of the Territories would consent—a plebiscite was not a practical method as most of the natives would not understand what the question really was. Although the Union Government were prepared to go a long way financially in the endeavour to gain the goodwill and confidence of the natives, they did not want to spend a million pounds and then be told that the natives refused to come in.

After all, why should transfer be made dependent upon the consent of the natives? In no Territory in Africa had any Power, Great Britain or any other, ever consulted the natives before establishing a Protectorate. It could not be denied that the natives of the Protectorates depended economically on the Union—they worked on the mines and they depended on Union markets for their export produce. He enquired if taxation of natives was lighter in the Protectorates than in the Union. (The Administrative Secretary said that it was about the same or possibly heavier if levies were included.) In Zululand they had maintained the Chiefs and the tribal system. There could therefore be no real argument against transfer. He feared however the electorate in the United Kingdom, which was liable to be affected by misrepresentation as regards native questions.

In reply to a question by Sir Cecil Fforde the Minister observed that on the Union side there would no doubt be some opposition by farmers in the Union to transfer—indeed he had had some difficulty in preventing a strong resolution on the subject being passed at Paarl. He thought however that they would realize that the question of transfer was one of national importance overriding minor agricultural factors. Just as if the question of absorbing Southern Rhodesia arose there would be opposition from tobacco interests but this opposition could not be allowed to override the greater question of policy.

The Minister continued, that he did not know if the Prime Minister had informed Sir William Clark that the Cabinet had agreed that the position of serving officials would be unimpaired in the case of transfer. This applied also to native officials. The Administrative Secretary said that Sir William Clark had been so informed.

Sir Cecil Fforde said that the question of how native opinion was to be ascertained had not yet been considered as the first step was to establish confidence. No doubt much could eventually be done through the Chiefs when these had come into contact with Union officials and had realized the assistance which the Union Government were about to provide. The undertaking as regards retaining the officials serving in the Territories and safeguarding their rights would ensure that transfer when it came would not appear to cause any alteration in things as they were. It would be gradual and imperceptible.

RECORD OF A MEETING AT UNION BUILDINGS AT 3 P.M. ON WEDNESDAY, 7TH NOVEMBER.

Present:

MR. HOFMEYR (*Minister of Public Health, Education and Interior*).
SIR CECIL FFORDE.
MR. H. E. PRIESTMAN.

The Minister enquired if it were desired to make any specific proposals relating to matters with which the Departments under his charge are concerned *vis-à-vis* the Territories.

Mr. Priestman explained that the High Commissioner had discussed with the Resident Commissioners possible ways of improving co-operation between the Minister's Departments and the Territories from which the salient factor emerged that as a preliminary to the submission of any specific proposal it was necessary to ascertain to what extent the Union Government would be prepared to assist financially with capital expenditure and with annual expenditure in connexion with maintenance of any schemes put forward whether in relation to existing services or to the extension of such services.

Sir Cecil Fforde indicated that if an understanding as regards finances could be reached it would be possible to suggest means by which the Union Government might be associated in assisting with medical services and proposals could be formulated as regards the construction of hospitals, institutions for the treatment of tuberculosis and leprosy and for the general extension of medical work.

Mr. Hofmeyr stated that it was not proposed that financial assistance should be afforded by his Department to services in the Territories. There was already close co-operation between the Union Medical Departments and the Territories and it was recognized that every possible assistance should be rendered to the Territories as regards dealing with epidemics. An officer had recently been lent to Basutoland to advise on rodent destruction, and his Department would always do their best to assist with advice when required. The second way in which the Medical Department was prepared to assist was as heretofore in providing institutional treatment for native tuberculous and leprosy cases in the Union institutions and steps were being taken to increase these facilities by the construction of additional institutions for the treatment of tuberculosis.

Sir Cecil Fforde stated that there was a natural reluctance on the part of natives to go to institutions outside their own area and that the provision of such facilities in one or other of the Territories would be appreciated by native opinion. There was furthermore the fact that the fees for treatment of natives in institutions in the Union were so high as to prevent natives from availing themselves of treatment.

The Minister said that he definitely could not support financial assistance of the nature suggested. As regards fees in Union institutions he was prepared to consider the question whether further reduction was possible. He suggested that the Chief Medical Officers of the Territories should get into touch with the officers of his Department during the medical conference at Johannesburg next week with a view to discussing any methods by which co-operation could be improved but apart from the possibility of reduction of fees the question of finance should be excluded.

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Sir Cecil Fforde understood that because of the expense it was not possible for the Territories to avail themselves to any great extent of the facilities for admission of juveniles to Union reformatories.

The Minister said that this came under his charge in the sphere of Education. In this financial assistance was also out of the question as the charge was frequently made that the Union were not spending enough on their own natives. He would however look into the question of fees. The charges in lunatic asylums in the Union to which natives of the Territories were admitted were low.

Sir Cecil Fforde enquired if as Chairman of the Road Board the Minister could assist in providing adequate access roads to the Territories. Swaziland in particular as well as the Union stood to gain from anything which facilitated tourist traffic.

The Minister said that the Road Board were only concerned at present with trunk roads and it was not proposed that any of these should pass through the Territories. There would however be benefit to the Territories as the Provincial Road Boards would be able to concentrate more on minor roads. He would also bear the question in mind in the future.

10991/278. No. 30.

TELEGRAM

from

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received 6.25 p.m., 22nd November, 1935.)

[*Answered by No. 34.*]

No. 192. 22nd November. Following for Harding.

Begins.—My letter of 15th November* in post to you regarding discussion with Minister of Native Affairs concerning co-operation. After number of discussions between the Secretary for Native Affairs and Fforde and Priestman, Minister of Native Affairs asked for further discussion on the 21st November at which Fforde and Priestman emphasized again the danger of instructing officials to set about influencing the minds of the Chiefs towards transfer until the native population had had opportunity to observe from concrete example desire of the Union Government to contribute to their welfare. They also pointed out that the process must be gradual.

Minister apparently realizing that his previous position was untenable accepted this view and suggested that record of the meeting held on 12th November should be abandoned and that the document for submission to the Union Cabinet and to the Secretary of State should be the memorandum enclosed in my letter to you above-mentioned omitting reference to the note of interview and substituting for paragraph 6 words to the effect that if and when contemplated schemes are put into operation by the Union Government, natives should be tactfully instructed as to the object of these schemes and benefits which will flow from them and led to recognize them as indication that the Union Government are working in concert with the local Administrations with real and generous desire to develop and improve the conditions in the Territories. Grobler is pressing for reply and offers to come and see me 28th or 29th November. Whilst his urgency is rather unreasonable in view of previous delays it is desirable to meet him if possible as the Estimates are now being framed and Ministers scatter again early in December.

In view of change in Grobler's attitude it is difficult not to accept his offers but I should feel more comfortable about it if the Union Government's proposal had been on a more co-operative footing such as e.g., share of developmental expenditure on a fifty-fifty basis. Their object in wishing to shoulder practically the whole expense is very evident and while Grobler has dropped his immediate insistence they will probably return to the charge later on. I also feel that there is some danger that native opinion, particularly in Basutoland, may react unfavourably to such large scale expenditure by the Union Government in the Territories as being in the nature of an attempt to buy them and employment of large number of Union officials in the Territories as contemplated may similarly arouse suspicion. As to this I am summoning the Resident Commissioners here on 27th November in order to ascertain their views and consider means of reassuring native opinion.

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* No. 31.

However we are in a position in which it is exceedingly difficult to refuse on the ground that the Union is being over generous. Do you agree? I should be very grateful if you could send me instructions by the middle of next week. I should be glad if I could have some discretion in case the Resident Commissioners are very strongly of the opinion that action on the lines proposed would have the wrong effect in the Territories.—*Ends.*

10991/281. No. 31.

SIR WILLIAM CLARK (HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND)

to

SIR EDWARD HARDING (DOMINIONS OFFICE).

(Received 27th November, 1935.)

High Commissioner's Office, Pretoria,

MY DEAR HARDING, 15th November, 1935.

I enclose for your consideration a copy of a record of discussion with the Minister of Native Affairs together with a Memorandum showing the principal points arising out of it.

2. I also enclose the original version of paragraphs 27 and 28 containing some statements by the Minister which, on the suggestion of the Secretary for Native Affairs, have been omitted from the record.

3. Copies of discussions with the Ministers of Agriculture and Public Health, etc., were forwarded with Priestman's letter to Whiskard of the 8th of November*.

4. As regards agriculture the Government of the Union are not prepared, because of political reasons, to remove the weight restrictions on the export of cattle from the Territories or to remove the discrimination in weight against cattle exported from the Bechuanaland Protectorate. The question of a refund of part of the levy imposed under the Union Livestock and Meat Industries Control Act is still open but there is also strong disinclination on political grounds to legislate to secure this.

In other words we are likely to secure no concessions under this very important head.

5. I have no doubt that removal of these two points of irritation which in effect constitute breaches of the Customs Agreement for free interchange of commodities would have had an appreciable effect in influencing opinion in the Territories favourably towards the Union and concession as regards the former point would be of direct benefit to natives.

6. Apart from the above the expressed intention is to maintain only such restrictions as are necessary on veterinary grounds.

7. As regards co-operation in education and medical projects nothing new has emerged.

8. The general impression which Fforde and Priestman have gained from conversations with Ministers is that the latter expect very definite and quick return for their proposed expenditure on the Territories. They would like us to begin by intimating to the Chiefs that transfer of the Territories has been agreed upon and is imminent and that they had better make the best of it. Grobler and Kemp have expressed the view that transfer should occur within two years which incidentally coincides with the unexpired period of the present Government's tenure of office. You will observe from the interview with Reitz that he was inclined to burke the question of obtaining the acquiescence of the natives to transfer and Grobler similarly considered that an intimation that transfer was about to become a *fait accompli* should precede financial assistance by the Union. I have no hesitation in saying that any intimation at present to the Chiefs on the lines proposed by the Minister would not only result in the refusal of the Chiefs to accept financial assistance from the Union or to co-operate in works financed from such sources, but might, in the case of Basutoland at any rate, cause tribal unrest and disorder.

9. I think, therefore, that the Union cannot be allowed to provide financial aid to the Territories under the impression that by so doing they will have acquired a right to take the Territories over without the acquiescence of the peoples concerned. I suggest, therefore, that I should be authorized to inform the Prime Minister that His Majesty's

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* No. 29.

Government rest on the terms of the agreement of last May between Mr. Thomas and General Hertzog, that is, that the policy of both Governments for the next few years should be directed to bringing about a situation in which, if transfer were to become a matter of practical politics, it could be effected with the full acquiescence of the populations concerned; that to this end the essential preliminary is that the goodwill of the natives towards the Union Government and towards Union policy should be won, so that if possible the natives should be got to look upon transfer as being in their interests, and that the first step would be to discourage agitation against joining the Union and to concentrate on getting everyone to work for the success of such co-operative measures as may be found possible; that as regards any financial assistance which the Union may afford towards the development of the Territories, instructions will be issued to the officials in the Territories that they must keep the Chiefs and peoples fully informed of the extent of the co-operation of the Union in this direction, but that such financial assistance can only be regarded as a factor which may influence the peoples of the Territories towards ultimate transfer. Until a suitable atmosphere has been created, attempts to approach the Chiefs on the lines proposed by the Minister of Native Affairs would not only tend to prevent their acceptance of the association of the Union in any projects for the development of the Territories, but would also be calculated to jeopardize the transfer of the Territories with the acquiescence of the peoples concerned.

10. I would especially urge upon you that we must be careful to make our position clear or we may expose ourselves subsequently to the charge of having taken money on false pretences. The Union Government are obviously out to buy the Territories and want to commit us to a guaranteed early delivery. The onus of securing native acquiescence is to be placed on us. We must clearly avoid being placed in such a position.

11. The attitude of Grobler and Reitz represents, I imagine, the views of what may be described as the " hard-boiled " section of the Cabinet. I should hope that they are not shared—at any rate in so crude a form—by Hertzog and Smuts, but owing to my illness I have not been able to take any soundings with either of the latter. Hertzog has always given me the impression of not personally being in any great hurry about transfer, but I confess to looking forward with some anxiety to the pressure which may be exercised in the future if the Union Government maintain the proposed lavish scale of expenditure. I am not opposed to transfer—indeed, I believe it to be essential eventually to the well-being of the Territories—but we must have a reasonable measure of native acquiescence, and I doubt very much whether two or three years of developmental expenditure by the Union is going to have much influence on the Chiefs. " *Timeo Danaos et dona ferentes* " is much more likely to be their attitude.

12. I hope you and the Secretary of State will agree as to the importance of making our position clear and I should be glad to hear whether you would approve of my using language on the lines of that suggested in paragraph 9 above. It would be as well if you could telegraph.

Yours, &c.,

W. H. CLARK.

Enclosure 1 in No. 31.

RECORD OF A MEETING HELD AT UNION BUILDINGS, PRETORIA, AT 10.30 A.M., ON TUESDAY THE 12TH NOVEMBER.

Present:

THE MINISTER OF NATIVE AFFAIRS.
MR. D. L. SMIT (*Secretary for Native Affairs*).
SIR CECIL FFORDE (*President of the Special Courts of the Protectorates*).
MR. H. E. PRIESTMAN (*Administrative Secretary to the High Commissioner*).

The Minister stated that it had been agreed by the Cabinet that the Government of the Union should assist in schemes for the development of the Protectorates for the benefit of natives and that his department should be responsible for the preparation of estimates and for the supervision of the works financed by Union funds. He had had under consideration certain schemes of development proposed on behalf of the Territories and was prepared to recommend inclusion in next year's estimates of funds for the promotion of those schemes, provided that rates of payment for native labour did not exceed those in force in the Union in similar circumstances. The Union rates were a maximum of 22*s*. 6*d*. a month for unskilled labour or 6*d*. a day plus 5 lb. of mealies.

2. The Administrative Secretary said that the Territories were bound by the League of Nations Convention regarding forced labour and that it would be necessary to pay normal local rates for unskilled labour unless the works were in the nature of minor communal services.

3. The construction of a dam might fall within that category or not according to its size and the purposes for which it was intended and the persons required to work on it.

4. Sir Cecil Fforde said that objection had been raised as regards the utilization of regiments in the Territories for constructional works in areas in which some of the labourers did not reside and the aim had been to prevent as far as possible the use of unpaid or forced labour by the Chiefs.

5. The Minister said that the Union were also bound by the Forced Labour Convention but he did not contemplate the use of forced labour. What he expected was that as in the Union if the people wanted a dam or a water supply, they should be told that the Government would provide the engineers and tools if the natives would supply the labour. If the natives voluntarily agreed to work without payment on a service for their benefit there was no breach of the Convention.

6. The Administrative Secretary thought that ordinary rates of wages would have to be paid for major constructional works but promised to consult Resident Commissioners regarding the wages payable in the Territories for unskilled labour. He understood that the Herschel erosion works had been started as a famine relief scheme and that the rates of wages originally paid there could therefore not be taken as a basis.

7. The Minister said that as regards finances, provided that an arrangement in respect of wages could be reached, he was anxious that the Union should be regarded by the natives as undertaking the works and wished to know to what extent His Majesty's Government might desire to assist.

8. Sir Cecil Fforde enquired if a payment of pound for pound—that is a contribution of fifty per cent of the cost by the Union and by His Majesty's Government respectively would meet the case.

9. The Minister said that this would be open to the objection that the work might not be regarded as being undertaken by the Union—whereas he wished it to be clear both from the expenditure and the officials employed that the work was being done mainly by the Union.

10. As regards anti-soil erosion measures in Basutoland, he had put £25,000 in the estimates for the financial year commencing in April next. He could not of course say for certain if this amount would be sanctioned by the Finance Department but he did not anticipate any difficulty. He would prefer that the Union Government should expend the whole £25,000 in the year, but had no objection to His Majesty's Government contributing £5,000, leaving the Union to pay £20,000.

11. The Administrative Secretary mentioned that the total expenditure on the scheme might be in excess of £200,000 and enquired if the Minister contemplated further annual instalments being made on the above basis, *i.e.*, 20 per cent by His Majesty's Government and the balance by the Union, and also, seeing that annual costs of maintenance would arise after a few years reaching £4,000 per annum after the tenth year, the Union would assist towards the cost of maintenance.

12. The Minister said that he did propose that further annual instalments of the same amounts should continue on a similar basis while required or until transfer took place, and that as regards the cost of maintenance this would naturally be met by the Union as it was out of the question to imagine that transfer would not have taken place within a few years.

13. Sir Cecil Fforde said that on the question of control it would be necessary to work through the Resident Commissioner and the High Commissioner as there could not be dual control.

14. The Minister envisaged consultation between one of his senior engineers and Mr. Thornton on the question where the erosion work should be started in Basutoland and what the programme should be. Then the work would be carried on with the staff provided by the Union and the senior engineer would visit and advise from time to time. The Administration would have to deal with any difficulty as regards labour.

15. Sir Cecil Fforde saw no difficulty provided that in case of disagreement the matter should be referred to the Native Affairs Department by the supervising engineer if he failed to come to an agreement with the Resident Commissioner and this would then form a subject for discussion between the Minister's Department and the High Commissioner. Orders with which the Resident Commissioner disagreed could not however be issued by an official of the Union.

16. The Minister agreed that there could not be dual control but did not see that any difficulty could arise on technical matters agreed upon by his engineer and Mr. Thornton and he thought that in any case these could be settled by consultation between his Department and the High Commissioner.

17. As regards Swaziland he had proposed to budget for £10,000 for irrigation and dams. The Administrative Secretary said that no specific proposal for irrigation in Swaziland had been submitted though it would be seen from paragraph 126 of the Pim Report that irrigation schemes had been evolved in 1927 by an engineer lent by the Union. A scheme was in process of submission for the provision of a farm for agricultural and experimental purposes and the Union Government might like to assist in this.

18. The Minister said that the Union had not had good results from the Government farms for educational purposes in the Transkei. The buildings had been very expensive and the pupils if they did not get Government appointments did not go back to their farms but drifted off into other vocations. He would not therefore be prepared to assist in a farm of that kind, but a purely experimental farm on a moderate scale was another question and he would be prepared to consider favourably any scheme on those lines.

19. He suggested that Messrs. Roberts and Thornton might be asked to put up an irrigation scheme.

20. The Administrative Secretary promised to ascertain details of the irrigation schemes put up in 1927 and to consult the Minister's Department in respect of any proposals for an experimental farm. The Minister did not propose that His Majesty's Government should be asked to assist in the finance of this project for irrigation.

21. As regards the Bechuanaland Protectorate the Minister said that he desired to make his Department responsible entirely for water development in the reserves and also for the investigation of the major Okavango scheme.

He had estimated that twelve drilling machines would cost £15,000 to operate for a year and that £6,000 would be required for plant, etc., in that period. He thought that the best way to get things done was to get a contractor to do the work as this would avoid the expense of setting up repair shops, etc. Supervision would be supplied by the Union Government and failing a contractor they would arrange for personnel and material. The money would not be forthcoming until the 1st of April.

22. The Administrative Secretary stated that His Majesty's Government had provided £25,000 for water development in the Bechuanaland Protectorate; the original proposal was to have sketch plans made showing where water supplies existed and where such supplies were desired. This would take time and would probably necessitate engaging a surveyor. Colonel Rey had therefore put forward maps showing where water supplies are urgently required and it was proposed to get Dr. du Toit as geologist to indicate where borings should be undertaken.

23. The Minister said that it was clearly impossible to have drilling operations divided between the Union and His Majesty's Government. He suggested therefore that the Union should undertake all the boring work and that in order to save time His Majesty's Government should take responsibility for engaging and paying the geologist so that he could have reported by the 1st of April when the Union money would become available. If a surveyor should be required His Majesty's Government should pay for him out of the grant made for the purpose, so that His Majesty's Government would be able to pay up to the £4,000 already granted and the Union would provide the balance of £21,000.

24. The Administrative Secretary said that it had been proposed to have a supervising agricultural engineer to advise on work in the three Territories and a junior agricultural engineer in the Bechuanaland Protectorate and Basutoland. None had been considered for Swaziland but the necessity might arise in connexion with an irrigation project. Could it be taken that the Union would supply the senior and the junior engineers?

25. The Minister said that Mr. Roberts or another senior Union officer would be made available to advise and supervise and that the Union would be prepared to supply the junior engineers or to finance them if they had to be got from elsewhere.

26. As regards the Okavango he was impressed with the possibilities of the scheme. He had put down as a preliminary step £2,000 for construction of a gauging weir near Andara and £3,000 for clearance of the Taoge.

The question of carrying out a detailed survey of the areas would receive consideration in due course. In the meantime he would like to visit the areas with some technical officers and officers of the Administration possibly about next June.

The Union would like to supply the surveyors but there was a shortage and if none were forthcoming locally he would like the High Commissioner to assist in securing sappers or other suitable surveyors, it being understood that the Union would bear the cost. Until a proper survey had been made it would not be possible to say what further

expenditure might be necessary if canalisation of the rivers proved essential, expenditure of some magnitude would arise. On the other hand clearing and straightening might be adequate.

They would like to utilize the services of Colonel Naus in connexion with this work.

27. In return for this financial assistance by the Union, the Minister said they expected that all officials would be requested to inform the Chiefs that transfer was about to take place. This had been decided in the Schedule to the Act of Union in 1910 and he thought it was incumbent on the officials in the Territories to make the way easy by impressing the advantages of incorporation upon the Chiefs and the economic risks which the Territories would incur by remaining outside of the Union. They could never exist as independent units without their current privileges. If the natives were not informed of the financial assistance provided by the Union they would with reason later on consider that they had been deceived.

Sir Cecil Fforde and the Administrative Secretary doubted the expediency of using such language to the Chiefs. They pointed out that it went beyond what was agreed between General Hertzog and the Secretary of State for the Dominions; it would greatly disturb the Chiefs; and would impair the prospect of bringing about that state of acquiescence which it was hoped to promote through the material benefits which the Union Government propose to confer upon the Territories. They thought the better course would be that officers in the Territories should be instructed to take every opportunity of impressing upon the Chiefs, if the schemes now contemplated were put into operation, how much they owed to the goodwill of the Union.

28. The Minister was desirous that the Chiefs should realize that the Union Government was anxious to maintain the power and prestige of the Chiefs and to maintain tribal institutions. They had recently restored criminal jurisdiction to certain of the Chiefs in the Transvaal. In any case he wished it to be clear that the Chiefs would be upheld by the Union and similarly that officials, whether European or native, would be maintained in their positions if they wished to remain and that their salaries, if higher than in the Union, would remain unchanged, or, if lower, would be brought up to the level of Union salaries drawn by Union officers of the same rank, and this applied also to pension rights.

29. He thought it would perhaps be wise in order to ensure uniformity with the laws of the Union that his Department should be informed of Proclamations affecting natives and be given an opportunity of commenting on them before they were brought into force. This applied particularly to legislation regarding Native Courts and Chiefs and Native administrations.

30. Sir Cecil Fforde said that as regards Native Courts in the Territories steps were being taken to reorganize them so as to ensure that cases were properly tried: that records were kept and that excessive fines were not inflicted and retained by the native Judges. He had been impressed by the sympathetic way in which cases concerning natives were tried in the Union. They had decided that the qualifications required by officers before becoming magistrates in the Territories should remain based on Union law examinations, so that in the event of transfer there would be no difficulty.

31. He enquired if anything could be done as regards the repair of access roads to the Territories.

The Minister said that he would give this matter consideration.

32. The Administrative Secretary enquired whether the Union would like to assist in schemes of development for which funds had already been provided or in any schemes which might be put up and also in the maintenance involved by such schemes. Further whether the Minister's Department would care to assist in financing educational, medical, agricultural and veterinary schemes. Grants for various purposes had been made by His Majesty's Government, *e.g.*, construction of bridges in the Bechuanaland Protectorate and Swaziland and for agricultural and veterinary schemes.

33. The Minister said that education, medical, etc., schemes came under other Ministers whom the High Commissioner's delegates had already seen. The same applied to veterinary proposals; agriculture which included stud farms was dealt with by his Department. In the latter case he would like to be given an opportunity of considering any schemes. As regards bridges and roads, he would not exclude them from consideration, but thought that in respect of next financial year it would be best to go ahead with expenditure on approved schemes and he could then consider later on whether he could assist.

34. He would however like his Department to be supplied with details of any schemes in respect of which grants had been made unless the grants had already been expended and also to be given an opportunity of commenting on any new schemes and of considering whether they could assist financially with them.

35. In conclusion the Minister said that he had informed Mr. Thomas that as His Majesty's Government had accepted the principle of transfer he saw no reason why it should not take place soon.

36. With the present parties in power in England and in the Union there was no reason to fear difficulties in carrying out the transfer of the Territories, but one could not say what difficulties might arise with a change in either or both Governments. This was one of the reasons why Union Ministers were anxious that transfer should be effected as soon as possible.

Enclosure 2 in No. 31.

MEMORANDUM OF THE PRINCIPAL POINTS DISCUSSED BY THE MINISTER AND SECRETARY FOR NATIVE AFFAIRS WITH REPRESENTATIVES OF THE HIGH COMMISSIONER ON TUESDAY THE 12TH OF NOVEMBER—SEE NOTE OF INTERVIEW ATTACHED.

1. It was agreed the following matters should be submitted by the Minister to the Cabinet for consideration and that the same proposals would be submitted by the representatives of the High Commissioner to Sir William Clark.

(1) *Transfer of Public Service:* that in the event of the transfer of the Protectorates to the Government of the Union the officers in the service of the Territories shall be transferred to the service of the Union and shall retain all their existing and accruing rights. In the event of the salary scales at the time of transfer being higher than those drawn by Union officers of the same rank such higher scales shall be maintained, but if such salary scales are lower than those drawn by Union officers of the same rank the scales shall be increased so as to conform to the Union scales of salary. The same rule shall apply to any special allowances drawn by officers of the Territories.

(2) *Expenditure by Union on Development:* The Union Government will place the sum of £65,000 on the estimates for the year 1936-37 to be expended in the following manner—

(*a*) BECHUANALAND PROTECTORATE.

Ngamiland Waterways.

Construction of a gauging weir near Andara	£2,000
Clearing of channel of Taoge River... ...	£3,000

Water Boring Programme.

Drilling machines, plant maintenance, etc....	£21,000

The Imperial Government will provide for the necessary geological investigations and carry out such surveys as circumstances may demand at an expenditure not exceeding £4,000 to be borne by the Imperial Government.

(*b*) BASUTOLAND.

Anti-soil erosion work	£25,000

The Imperial Government will be asked to pay to the Union Government a subsidy at the rate of 20 per cent of the amount actually expended during the year by the Union Government provided that the total amount payable by the Imperial Government shall not exceed £5,000. That the same principle should be followed in connexion with expenditure on this service in succeeding years up to the date of transfer.

(*c*) SWAZILAND.

Irrigation and dams	£10,000

The High Commissioner will place at the disposal of the Union Government the reports of survey carried out in 1927—*see* Sir Alan Pim's report on Swaziland, page 98.

(*d*) Miscellaneous services and overhead charges ...	£4,000
Total contribution by Union Government ...	£65,000

(*e*) The Union Government will be responsible for the annual cost of maintenance of any works undertaken by them.

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(3) *Programme of Works:* Programmes of any proposed works shall be drawn up from time to time by officers of the two services in consultation and submitted to the Minister for Native Affairs and to the High Commissioner for the Territories for approval before the works are undertaken.

(4) *Responsibility:* The works shall be carried out by the Union Government in consultation with the High Commissioner and his officers in the Territories and the Union Government shall be responsible for the appointment, control and organization of the staffs to be employed on the works, while the Protectorate officials will afford every assistance to further the undertakings and will use their influence in inducing the Chiefs to provide such labour as is necessary at rates of wages to be agreed upon by the Minister of Native Affairs and the High Commissioner. Any disputes or administrative difficulties with the natives shall be submitted to the Resident Commissioner for his consideration. There shall be the closest co-operation and consultation between officers of the Union and of the Territories in connexion with any such works.

(5) *Interchange of Information:* The Union Department of Native Affairs shall be given an opportunity of expressing their views on any important question of policy affecting the administration of the Territories, especially as regards proposed legislation affecting Native Courts, native administration and the functions and status of Chiefs.

(6) *Methods of Securing Acquiescence of Chiefs and People:* Agreement was not reached on this point. The Minister's view is that the Chiefs should now be informed that transfer was about to take place and that the Government of the Union was assisting in schemes of development to facilitate such transfer. The High Commission representatives considered that this went beyond the terms of the agreement between General Hertzog and the Secretary of State for the Dominions which envisaged that the policy of both Governments for the next few years should be directed to bringing about a situation in which if transfer were to become a matter of practical politics it could be effected with the full acquiescence of the peoples concerned, and that immediate action on the lines proposed by the Minister would impair the prospect of bringing about that state of acquiescence which it was hoped to promote through the material benefits which the Union Government proposed to confer upon the Territories. They thought the better course would be that officers in the Territories should be instructed to take every opportunity of impressing upon the Chiefs, if the schemes now contemplated were put into operation, how much they owed to the goodwill of the Union and the economic risks which the Territories would incur by remaining outside of the Union.

Enclosure 3 in No. 31.

PORTIONS OF PARAGRAPHS 27 AND 28 OMITTED FROM RECORD OF A MEETING HELD AT UNION BUILDINGS, PRETORIA, AT 10.30 A.M. ON TUESDAY THE 12TH NOVEMBER.

* * * * * *

27. . . . . of the advantages. The alternative would in the case of Basutoland for instance be to deport to Basutoland the Basutos living in the Union, prevent Basutos from working in the mines and close Union markets to them. They would very soon find that they could not exist without the Union.

Sir Cecil Fforde said that any action on those lines would frustrate the object in view which was to impress the natives with the sincerity of the desire of the Government of the Union for the welfare of the native races of South Africa.

28. . . . . Chiefs in the Transvaal. What he thought would happen would be that the Paramount Chiefs would in each Territory be asked to nominate a couple of representatives and he would nominate one and these with the Chief would form a council to advise the members of the Commission to be set up to advise the Prime Minister regarding the Territories.

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10991/282. No. 32.

TELEGRAM

from

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received 5.54 p.m., 29th November, 1935.)

No. 201. 29th November. Following for Harding.

Begins.—My telegram of the 22nd November, No. 192*. Resident Commissioners at an interview with me on the 27th November stressed necessity of informing chiefs in advance of any proposal for financial assistance or loan of officials by Union in connexion with work of development of Territories. Otherwise Administration might afterwards be charged with having deceived natives and loss confidence in Administration would result which would prejudice any efforts of the latter to bring to the notice of natives benefits to be derived from transfer. In any case information would arrive in garbled form in the near future when Union Minister had to explain proposals in connexion with Estimates. Resident Commissioners considered chiefs who are already disturbed about implication of Thomas-Hertzog agreement would immediately ask for information regarding Union's objects and that if proposals remain on present basis, Union providing almost all expenditure, it would be impossible to reply that Union were merely assisting or co-operating and they would jump to the conclusion that object was to bring about early transfer. Resident Commissioners thought that this would at once bring transfer issue to a head in a way which would be most undesirable from view point of either Union or His Majesty's Government. It would almost certainly result in natives refusing to accept assistance from the Union or to co-operating work. Anti-erosion work in Basutoland would be rendered impossible as free access to native lands would not be forthcoming. Resident Commissioners thought that these objections would largely disappear if it were made clear that Union were voluntarily co-operating and assisting but not controlling. This would be effected if Union financial contributions were limited to say 50 per cent and officials of territories were associated in work.

As indicated in my telegram No. 192 I was already anxious as to effect which Grobler's proposals might produce in Territories and I was the more impressed with views of Resident Commissioners who are in close touch with their chiefs. I therefore ventured to put this point of view to Grobler when he came to see me yesterday, prefacing my remarks by making it clear that I had not yet received instructions from Secretary of State. I pointed out what we both wanted was to bring about in the Territories a change of feeling towards the Union and I feared that his proposals, generous as they were in themselves might by going too far have precisely the opposite effect. Very friendly conversations ensued and Grobler showed an unexpected readiness to modify his proposals. He appears to have realized that native opinion must be taken seriously. He seemed prepared to accept the view that in initial stage at any rate it would be wiser for the Union to be a contributor only, say on a 50/50 basis and that while Union officials should be employed as much as possible it would be necessary to associate with the work not only Resident Commissioners but such local technical officers as are available so as to avoid misconception by natives and ensure their co-operation and thus avoid friction.

It was agreed that on receipt of Secretary of State's instructions I should communicate further with Ministers on question of extent to which the Union should contribute to scheme mentioned in memorandum and also as regards control and supervision of work. Ministers stated that in view of this it would not be possible for him to put matter to the Cabinet until after the 15th January when they reassemble at Capetown. The question has therefore lost its immediate urgency.

I of course made it clear throughout that I was only expressing my personal opinion. In view however of argument adduced by Resident Commissioners and of Grobler's amenability I would now strongly recommend that we should ask for 50/50 basis with control of operations secured to our Administration. This would imply that the Colonial Development Fund would have to furnish next year half of the amount forecasted by Grobler for water scheme in Bechuanaland (for water boring of course funds have already been provided) and soil erosion in Basutoland and for some irrigation works in Swaziland though probably not on so large a scale as Grobler indicated.—*Ends.*

* No. 30.

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10991/283. No. 33.

TELEGRAM

to

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND

(Sent 8 p.m., 2nd December, 1935.)

No. 176. Confidential. Following from Harding.—

Begins.—My immediately succeeding telegram was drafted prior to receipt of your telegram No. 201 of 29th November*. You will see that Secretary of State fully concurs in the line adopted by you in your discussion with Grobler and you are authorized so to inform Union Ministers.

He also concurs with your view as to necessity of informing chiefs in advance and you should therefore impress upon Union Ministers desirability of your preparing and agreeing with them statement for this purpose (which Secretary of State would like to see in draft before it is issued) before any announcement is made in Union Parliament or Press as to measure of Union co-operation.—*Ends.*

10991/278. No. 34.

TELEGRAM

to

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Sent 10 p.m., 2nd December, 1935.)

No. 177. Confidential. Your telegram 22nd November, No. 192†. Following from Harding.

Begins.—While Secretary of State is of course anxious to implement to fullest extent agreement reached between his predecessor and General Hertzog, he entirely agrees with views expressed in your letter of 15th November‡ and is glad to learn that Minister of Native Affairs has agreed to modify original proposals. He shares however your misgivings as to effects on native opinion of proposals even in their present form, and in particular he is doubtful how far native authorities will be prepared at present to co-operate in development schemes in the Territories to be carried out under the direct administration of the Union Government. Furthermore, any action by Union Government which could be regarded as unduly precipitate or as impairing your administrative responsibility would certainly excite adverse Parliamentary criticism here. This, in turn would be likely to confirm doubts in minds of natives. Subject to result of your discussions with the Resident Commissioners, it would seem desirable therefore to suggest to Union Government advisability of approaching problem on more co-operative lines—e.g., on a fifty-fifty financial basis, the High Commissioner remaining responsible for administration of schemes but proceeding in consultation with the Union Government. Secretary of State in any case feels that you should discuss the matter with the Prime Minister on the lines suggested in paragraphs 9 and 10 of your letter of 15th November. He attaches special importance to point made in paragraph 10, and is anxious that Prime Minister should be under no illusion in this respect.

As regards details of revised memorandum, our observations are as follows:—

Paragraph (1). This paragraph is largely covered by section 22 of the Schedule to the South Africa Act, and in any case, for reasons given in enclosure to your despatch of 25th October No. 608§, we should be disposed to deprecate circulation of the statement to members of Public Service generally at this stage.

Paragraph 2 (c). We cannot trace any such reports (except that enclosed in your despatch 14th July, 1926, No. 343‖) but we presume that

* No. 32. † No. 30. ‡ No. 31. § No. 28. ‖ 8353/26: not printed.

they related to European settlement schemes. As object of Union Government is to impress natives, it is presumed that they would wish their expenditure to be for the purpose of developing or extending the existing native areas.

Paragraph (4). As regards rates of wages, it will be necessary to bear in mind proviso (*a*) (i) to section 1 (2) of Colonial Development Act. It is not clear from paragraph 5 of record of interview whether the intentions of Union Government are consistent with this.

Otherwise we have no observations except that you may think it desirable to express disappointment at inability of Union Government to agree to removal or modification of weight restriction on cattle in view of effect which such a concession might have been expected to have on native opinion.—*Ends.*

10991/284. No. 35.

SIR WILLIAM CLARK (HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND)

to

SIR EDWARD HARDING (DOMINIONS OFFICE).

(Received 11th December, 1935.)

Pretoria, 29th November, 1935.

MY DEAR HARDING,

With reference to my telegram No. 192 of the 22nd November* I enclose, for your information, a copy of the record of Fforde and Priestman's meeting with the Minister of Native Affairs on the 21st of November.

The salient points of my subsequent discussion with Grobler on the 28th of November are given in my telegram No. 201 of to-day† and I think that there is nothing of importance to add.

Yours, &c.,

W. H. CLARK.

Enclosure in No. 35.

RECORD OF MEETING AT UNION BUILDINGS, ON THURSDAY, THE 21ST NOVEMBER AT 3 P.M.

Present:

MINISTER OF NATIVE AFFAIRS,
SECRETARY FOR NATIVE AFFAIRS,
SIR CECIL FFORDE,
ADMINISTRATIVE SECRETARY TO THE HIGH COMMISSIONER.

The MINISTER said that he was anxious to avoid any point of difference as regards the methods to be adopted to secure the consent of natives to transfer. He had suggested an alternative to paragraph 27 of the record with this in view.

SIR CECIL FFORDE stated that the question was not one of finding a formula to indicate what would be expected of the officials of the Territories in this connexion. The position is, as stated in the *aide-mémoire* handed by Mr. Thomas to General Hertzog, that the policy of both Governments for the next few years should be directed to bringing about a situation in which if transfer were to become a matter of practical politics it could be effected with the full acquiescence of the populations concerned. The *aide-mémoire* went on to say that " in particular it appears to us to be an essential condition of the success of such a policy that the native population should feel that the Union Government are working in concert with the local Administrations with a real and generous desire to develop and improve conditions in the Territories."

The condition precedent was, therefore, that the Union Government should show their goodwill by association in expenditure for the benefit of the natives and by any other means which might be decided upon. It would then be possible for the officials in the Territories to point to these works of benefaction as an indication of the goodwill of the Union towards the natives, and also to impress upon the natives the advantages to be derived from transfer to the Union. The decision as to when the time was ripe

* No. 30. † No. 32.

for such propaganda must rest with the High Commissioner after consultation with the Resident Commissioners. It would of course be necessary to inform the natives of any expenditure which the Union made or proposed to make on their behalf, but this information could not be linked up at this stage with any propaganda as regards transfer. If it were, it would most certainly jeopardize the whole position. The natives would suspect that a bargain to transfer the Territories had been made behind their backs. The arrival of Union Engineers, officials, and material would be regarded as evidence of this bargain. Violent opposition would be provoked and the result might be that the Union Government would be unable to proceed with their programme of collaboration. The matter would have to rest on the basis of a gentleman's agreement to the effect that officials would be instructed, when the time seemed suitable, to bring to the notice of the natives the goodwill of the Union towards them as evidenced by concrete examples, but the approach to the question of obtaining their acquiescence to transfer must be gradual. There could be no question of a bargain that if the Union expended so much the Territories would be handed over. Expenditure by the Union could only be regarded as a possible means of influencing the minds of the natives favourably towards acquiescence in transfer.

The MINISTER said that he was prepared to accept Sir Cecil Fforde's views and would suggest that the record of proceedings on the 12th November should be abandoned and that the only document to be put before the Cabinet and the Secretary of State should be the Memorandum already prepared omitting reference to the record and substituting for paragraph 6 something to the effect that if and when the contemplated schemes are put into operation by the Union Government the natives should be tactfully instructed as to the objects of these schemes and the benefits which will flow from them and led to recognize them as an indication that the Union Government were working in concert with the local Administrations with a real and generous desire to develop and improve conditions in the Territories. He was also anxious that the Chiefs should understand that he would maintain their position and tribal institutions.

SIR CECIL FFORDE thought that there could be no objection to the proposed paragraph which was substantially the same as the terms of the *aide-mémoire*.

The ADMINISTRATIVE SECRETARY said that it would of course be necessary for officials and natives to be convinced that benefits were in fact being conferred by the Union and the question was certain to be raised of the attitude of the Union as regards the maintenance of restrictions on cattle and other exports.

The MINISTER said that the natives would understand that transfer to the Union would result in the removal of such restrictions as they would, like South West Africa, be treated then as an integral part of the Union.

THE ADMINISTRATIVE SECRETARY said that as a result of the previous discussion with the Minister Sir William Clark had asked the Secretary of State for instructions and that the proceedings to-day could only be so far as Sir Cecil Fforde and himself were concerned *ad referendum* to Sir William Clark. There might be some delay owing to the elections in England but Sir William Clark hoped to be in a position to meet the Minister at the end of next week if the Minister would not mind going to High Commission House.

The MINISTER said that the Cabinet would scatter at the beginning of next month and he was anxious that they should deal with the proposed estimate before then.

The ADMINISTRATIVE SECRETARY said that it would probably be possible for Sir William Clark to see the Minister before then. He would arrange a date and time through Mr. Smit sometime next week.

10991/286. No. 36.

DESPATCH

from

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received 21st December, 1935.)

(No. 717.) High Commissioner's Office, Pretoria,
9th December, 1935.

SIR,

I have the honour to refer to the discussion between Sir Cecil Fforde, Mr. H. E. Priestman, and Mr. J. H. Hofmeyr, Union Minister of the Interior, Education, and Public Health, on the 7th November, a report of which is on record in the Dominions Office*, and to transmit herewith a copy of a letter which I have received from

* *See* No. 29.

Mr. Hofmeyr indicating the extent to which it will be practicable to make available to the High Commission Territories facilities in regard to Vocational Schools, Industrial Schools, and Reformatories in the Union.

2. I also enclose a copy of my acknowledgment. I am in communication with the Resident Commissioners with respect to the best means of utilizing the proposed concessions.

I have, &c.,
W. H. CLARK,
High Commissioner.

Enclosure 1 in No. 36.

Office of the Minister of the Interior, Education and
MY DEAR SIR WILLIAM, Public Health, Pretoria, 28th November, 1935.

With reference to the discussion which I recently had with Sir Cecil Fforde and Mr. Priestman, I write to say that I have now, as Minister of Education, gone into the question of the possible further utilization of institutions under my Department for the benefit of pupils and inmates from the Protectorates.

The matter falls to be dealt with under three heads:—

1. *Vocational Schools*, i.e., schools providing trade training on a voluntary basis. At the present moment we have an agreement with the Secretary for South West Africa for the admission of full paying pupils from that territory to our vocational schools. So far, however, no similar agreement has been made with any other adjacent territory. We would be prepared to make such an agreement with the Protectorates, if desired, on the same basis as with South West Africa. The full school and board fees payable would be £36 per annum with an additional 16s. per annum for medical fees.

2. *Industrial Schools*, i.e., institutions for the detention of juveniles in terms of the Children's Protection Act under a judicial or semi-judicial order. We have at present no power under the law to admit pupils from adjacent territories to these institutions since the order for detention has to be made by a magistrate of the Union. We would, however, be prepared, if desired, to consider amending the law so as to make it possible to admit such pupils. No doubt before this can be done it will also be necessary for the Administrations of the Protectorates to empower their courts to issue the necessary orders.

3. *Reformatories*. Here we have agreements entered into between the adjacent territories and the Prisons Department, from which we have recently taken over these institutions, for the admission of inmates from those territories. I find that the basis of this agreement is a payment of 3s. per day per European or non-European inmate. As we have only recently taken over these institutions we are not yet in a position to frame very accurate figures as to the actual cost. I am quite satisfied, however, that 3s. per day per non-European inmate is excessive, and we would be prepared to reduce this charge to 1s. 6d. per day in the first instance in the case of inmates admitted from the Protectorates. The question of the basis of charges imposed would, however, have to be further considered later after we have had more experience of the working of these institutions.

If it is your desire to go further into the points I have raised, I suggest that you should ask your officials to discuss the details with the Secretary for Education or if he is absent from Pretoria with the Under-Secretary.

Yours, &c.,
JAN. H. HOFMEYR.

Sir William Clark, K.C.S.I., K.C.M.G.,
High Commissioner,
Pretoria.

Enclosure 2 in No. 36.

MY DEAR MINISTER, Pretoria, 9th December, 1935.

Many thanks for your letter of the 28th November.

It is very good of you to have given such sympathetic consideration to the questions raised at the interview with you on the 7th November and I much appreciate the offer of assistance with regard to vocational schools and reformatories and, if the necessary legal procedure can be devised, industrial schools in the Union.

I am in consultation with the authorities in the Territories and am requesting them to communicate direct with the Secretary or Under-Secretary for Education in regard to any details that may require settlement.

Yours, &c.,
W. H. CLARK.

The Honourable
J. H. Hofmeyr, M.P.

10991/288. No. 37.

DESPATCH

from

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received 30th December, 1935.)

(No. 728.)

SIR, High Commissioner's Office, Cape Town, 18th December, 1935.

With reference to my despatch No. 717 of the 9th December*, I have the honour to transmit herewith a copy of a further letter from the Union Minister of the Interior, Education, and Public Health, enclosing a memorandum of a meeting at Johannesburg on the 25th November between the Union Secretary for Public Health and the Principal Medical Officers of Basutoland and Swaziland when various aspects of co-operation in health matters were discussed. I also enclose a copy of my acknowledgment.

2. I am in communication with the Resident Commissioners of the three High Commission Territories regarding the extent to which the recommendations made at the meeting can be applied.

I have, &c.,
W. H. CLARK,
High Commissioner.

Enclosure 1 in No. 37.

Office of the Minister of the Interior, Education and
DEAR SIR WILLIAM, Public Health, Pretoria, 3rd December, 1935.

I write with further reference to the discussion which Sir Cecil Fforde and Mr. Priestman had with me on the 7th November† in regard to the possibility of the extension of co-operation between the Union and the High Commission Territories in the matter of sanitary and medical subjects.

I am sending you herewith a copy of a memorandum of a meeting which took place in connexion with this matter between the Secretary for Public Health and the Principal Medical Officers of Basutoland and Swaziland. I understand that those who took part in the meeting were very well pleased with the progress made.

As far as the Union is concerned we shall be glad to give effect to the proposals contained in the memorandum to any extent to which it may be your wish to do so.

Yours, &c.,
JAN H. HOFMEYR.

Sir William Clark, K.C.S.I., K.C.M.G.,
High Commissioner,
Pretoria.

MEMORANDUM OF MEETING HELD ON 25TH NOVEMBER, 1935.

The following matters were discussed:—

1. *Mutual Assistance*:—The expert officers of the Union Department of Public Health have already been made available without cost to the High Commission Territories on request and should, in future, continue to be made so available.

2. *Drugs*:—The Central Medical Stores of the Union should in emergencies be able to be drawn on by the High Commission Territories on repayment, it being understood that discretion will be used in not ordering trifling quantities.

3. *Tuberculosis*:—It was considered that natives living under tribal conditions and suffering from pulmonary tuberculosis should not under ordinary circumstances be removed to hospital. In any special case where treatment in hospital is considered necessary, such facilities as the Union can offer should be made available at cost. This should apply also to Europeans.

4. *Leprosy*:—The Secretary for Public Health had seen the recommendation made by Sir Alan Pim in paragraph 211 of his report on Basutoland in regard to leprosy and as this appears to initiate a somewhat different policy from that in force at present in the Union and in Basutoland he considers it desirable that the Principal Medical Officer,

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* No. 36. † *See* No. 29.

Basutoland, should be given the opportunity of attending one or more meetings of the Leprosy Board in the Union with a view of ensuring a common policy and standards in connexion with the admission and discharge of patients.

Signed E. N. THORNTON.
.. H. W. DYKE.
.. R. JAMISON.

Johannesburg,
27.11.1935.

Enclosure 2 in No. 37.

MY DEAR MINISTER, Cape Town, 18th December, 1935.

I have received your letter of the 3rd December forwarding a memorandum of a meeting at Johannesburg on the 25th November between the Union Secretary for Public Health and the Principal Medical Officers of Basutoland and Swaziland when various aspects of co-operation in health matters were discussed.

I am grateful to you and your Department for the very helpful suggestions that have been made, and I am communicating with the Resident Commissioners of the three Territories with a view to ascertaining the extent to which the recommendations made at the meeting can be applied.

Yours, &c.,
W. H. CLARK.

The Honourable
J. H. Hofmeyr, M.P.

10991/291. No. 38.

SIR CECIL FFORDE (ACTING HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND)

to

SIR EDWARD HARDING (DOMINIONS OFFICE).

(Received 28th January, 1936.)

(Confidential.)

High Commissioner's Office, Cape Town,
13th January, 1936.

MY DEAR HARDING,

With reference to your confidential telegram No. 176 of the 2nd of December, 1935*, regarding the negotiations with the Union Government on co-operation, you might like to know how far we have got in preparing the way for a further discussion with Grobler.

2. I should first mention that as Clark expects to be in the saddle again within a fortnight I think it would be better to leave to him the next meeting with Grobler which will, subject to reference to the Secretary of State and the Union Cabinet, decide the policy as regards the financial side.

3. On receipt of your telegrams Nos. 176† and 177‡ Clark wrote to the Resident Commissioners asking Richards and Rey to recast their respective erosion and water development schemes so as to make it possible for the Union to come in on a fifty-fifty basis as from the 1st of April.

4. Richards sent in the necessary data which have been forwarded in my despatch No. 745 of the 30th December, 1935§.

5. Rey was sticky as he wanted to spend the £25,000 already granted by the Colonial Development Fund and to let the Union Government come in by contributing another £25,000. There was certainly reason in his argument that as His Majesty's Government had already granted the money and the natives had been so informed, they would not appreciate the reason why the Union Government should pay half the

* No. 33. † No. 33. ‡ No. 34. § 21261/12: not printed.

approved sum. The Union Government however had been specifically invited to assist financially with this scheme and there is at the moment no definite proposal for extension of the scheme.

6. I enclose copies of two despatches and a letter from Rey on this subject*.

7. I finally arranged that Rey should put up a five years scheme for consideration based on an expenditure of £25,000 on a fifty-fifty arrangement for the first year, less any sums expended prior to the 1st of April. This will necessitate submitting to the Colonial Development Advisory Committee that portion of the scheme which involves expenditure exceeding £12,500 assuming that the Union Government contributes the other £12,500; but, as the proposals will be subject to examination and approval by the technical advisers of the Union Government, I think that the Colonial Development Advisory Committee will not turn down the proposal because of doubts regarding the soundness of whatever scheme may emerge—though they may of course do so on financial grounds.

8. As regards Swaziland we have asked the Union Government to lend us an expert engineer to prepare with Thornton a water scheme on a small scale.

9. Simultaneously with his despatches to the Resident Commissioners re schemes Clark asked them to submit drafts of an explanatory statement suitable for communication to the Chiefs and natives of the Territories. I enclose copies of the replies from Richards and Marwick*—that from Rey* is enclosed in connexion with paragraph 6 above. I think that something on the lines suggested by Richards would be suitable. This assumes that the Union Government are contributing financially partly in their own interests and partly to secure that atmosphere of goodwill which is a condition precedent to any attempt to influence the natives towards acquiescence in transfer.

10. It seems to follow that if the Chiefs inquire whether the acceptance of a financial contribution from the Union will commit them in any way to transfer the answer would have to be in the negative.

11. I entirely disagree with Marwick's suggestions which would place transfer in the foreground—an issue which, as indicated in Clark's telegram to you No. 201 of the 29th November†, it is essential to avoid.

12. There is of course something in Rey's opinion, mentioned in his letter of the 25th of December, 1935*, that the Union policy, as reflected in their Native Bills to which my despatch No. 741 of the 30th December, 1935‡, refers, may influence Native opinion in the Territories against accepting any financial aid from the Union but, while the danger of this might be pointed out to Grobler, I do not think that we can refuse to proceed with negotiations on hypothetical grounds of this kind.

13. If the natives after having had the statement communicated to them do refuse to accept financial and technical assistance from the Union Government that would, I imagine, prevent us from accepting it on their behalf, but there seems no object in dealing with this possible issue until it arises.

14. In order to hasten matters I have had a draft statement* (copy enclosed) prepared and sent to the Resident Commissioners for their views. It is framed on the lines suggested by Richards and on the Thomas-Hertzog *aide-mémoire*.

15. I shall write again when I have had the views of the Resident Commissioners but, if in the meantime any better phraseology occurs to you, particularly as regards the first, second and last paragraphs, I shall be grateful if you will let me have your views by telegram.

Yours, &c.,
CECIL FFORDE.

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* Not printed. † No. 32. ‡ 11007/122: not printed.

10991/292. No. 39.

SIR CECIL FFORDE (ACTING HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND).

to

SIR EDWARD HARDING (DOMINIONS OFFICE).

(Received 30th January, 1936.)

(Confidential.)

High Commissioner's Office, Cape Town.
15th January, 1936.

MY DEAR HARDING,

With reference to paragraph 14 of my confidential letter of the 13th January* to you regarding the draft statement on co-operation with the Union Government and to my confidential telegram No. 3 of to-day†, I enclose a revised draft statement, in substitution for that forwarded with my above-mentioned letter, which incorporates suggested alterations by Clark, who proceeded to tackle a copy of the original draft given to him by Priestman for information.

I think that the revise is a definite improvement on the other and I am very glad that Clark has felt fit enough to assist.

Yours, &c.,

CECIL FFORDE.

Enclosure in No. 39.

MEMORANDUM.

In the course of discussions in May last between Mr. Thomas, then Secretary of State for the Dominions, and General Hertzog, the Prime Minister of the Union, it was agreed that an endeavour should be made to establish a closer measure of co-operation between the Government of the Union and the Administrations of the Territories in matters affecting the Territories' interests. It was General Hertzog's hope that, in this way, the native population of the Territories would come to feel that the Union Government were working in concert with their Administration with a real and generous desire to help in the development and improvement of conditions in the Territories. In pursuance of this aim, the Union Government have volunteered to assist financially with certain schemes for improving conditions in the native areas of the Territories, and His Majesty's Government in the United Kingdom, being convinced that such co-operation will be productive of great benefit to the Territories concerned, trust that the offers of the Union Government will be cordially welcomed.

As regards Basutoland it will be remembered that, in the Report of January 1935, the Commission appointed by the Secretary of State for Dominion Affairs to enquire into the financial and economic position of that Territory recommended that His Majesty's Government should make a grant for anti-soil erosion work in Basutoland. Recognizing the urgency and importance of this work not only to Basutoland but to South Africa as a whole, the Union Government have not only most generously offered to assist financially to the extent of half the cost but have placed the experience gained by their engineers who have been engaged on similar works in the Transkei and other parts of South Africa at the disposal of the Basutoland Administration in the carrying out of the scheme.

As regards the Bechuanaland Protectorate, the Commission which reported in 1933 on the economic and financial position of that Territory stated that, at every stage of their enquiries, whether they related to agriculture, to cattle or to human health and amenities, they realized that the absolutely essential condition to any progress was the improvement of the existing water supplies and the provision of new supplies. The Commission suggested that improvement should be brought about by the provision of wells and dams and by the clearance of the main channels into which the river Okavango divides its delta. The improvement of these water supplies would benefit not only the Protectorate but also the adjacent areas of the Union which cannot but be prejudiced as regards rainfall by the existence on the borders of large areas in an advanced state

* No. 38. † No. 10991/289: not printed.

of dessication. The Union Government have most generously offered to place their wide experience in regard to the provision of water supplies at the disposal of the Administration of the Protectorate and also to assist financially to the extent of half the cost of such works as may prove to be necessary.

As regards Swaziland, the Commission which reported in 1932 on the economic and financial position of that Territory stressed the necessity for measures for the conservation of water, particularly in the low veld, by the provision of dams. In order to permit of the initiation of measures for this purpose His Majesty's Government of the Union of South Africa have generously offered, in co-operation with His Majesty's Government in the United Kingdom each paying half the cost, to provide funds for expenditure on the provision of water in native areas in Swaziland.

10991/302. No. 40.

RECORD OF MEETING BETWEEN THE HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND, AND THE MINISTER OF NATIVE AFFAIRS.

HELD AT 11 A.M. ON TUESDAY, THE 11TH OF FEBRUARY, 1936.

Also Present:—

MR. D. L. SMIT, Secretary for Native Affairs.
MR. H. E. PRIESTMAN, Administrative Secretary to the High Commissioner.

SIR WILLIAM CLARK explained that at his previous meeting in November last with the Minister he had not received the instructions of the Secretary of State but had indicated that in his own opinion the original proposals of the Minister, generous as they were in themselves, might by going too far have precisely the opposite effect of what was desired by both parties, i.e., to bring about in the Territories a change of feeling towards transfer. He had therefore suggested that in the initial stages at any rate it would be wiser for the Union to be a contributor only say on a fifty-fifty basis and that while the help of Union technical officials would be welcomed, it would be necessary to associate with works of development not only the Resident Commissioner as the administrative head of the Territory concerned but such local technical officers as are available so as to avoid misconception by natives and ensure their co-operation and thus avoid friction. He had also stated that he considered that the Chiefs should be informed in advance of the proposed assistance by the Union.

The Secretary of State's instructions which were subsequently received agreed with the above view, pointed out the danger of the native authorities refusing to co-operate in schemes if carried out under the direct administration of the Union Government and mentioned that adverse parliamentary criticism might be excited in the United Kingdom if any action by the Union Government could be regarded as unduly precipitate or as impairing the High Commissioner's administrative responsibility. The position was therefore that His Majesty's Government rested on the terms of the Thomas–Hertzog agreement which laid it down that the essential preliminary was to secure the good will of the natives towards the Union Government. Financial assistance could only therefore be regarded as a factor which might influence the peoples of the Territories towards acquiescence in ultimate transfer.

The Secretary of State agreed as to the necessity of informing the Chiefs in advance and had approved a draft statement which had been drawn up on the High Commissioner's instructions. Sir William Clark handed a copy to the Minister and said that he would be glad to learn if the Minister agreed to the text, after the Minister had had an opportunity of considering the document. Sir William Clark felt it necessary to say that in his opinion the removal by the Union of the weight and other restrictions on cattle export from the Territories would go further in influencing the minds of the natives favourably towards transfer rather than financial contributions. He thought it only fair to add also that the policy of the Union Government towards natives in the Union was a factor which would influence native opinion in the Territories and that the position had not been improved by the native bills, although the recent compromise might go some way towards removing this adverse effect.

THE MINISTER said that if the acquiescence of all the natives of the Territories had first to be secured transfer could never be effected. He assumed however that partial acquiescence would suffice. The difficulty would be Basutoland, as the Bechuanaland Protectorate and Swaziland would probably come in as they realized that they depended

on Union markets. He doubted whether the native bills affected the average native in the Territories as it was really only the native intelligentsia in the Union who were concerned. The fifty per cent basis of contributions and control by the Administrations made it a matter of some doubt whether the natives would realize that the Union were assisting. He hoped that instructions would be issued by the High Commissioner to ensure that due publicity should be given to this and also to ensure that officials would point out the advantages of coming under the Union. He was anxious that Chiefs and people should realize that the intention of the Union Government was to uphold the Chiefs and to maintain tribal institutions and that so far as these were concerned the Chiefs and people would find that they would be exactly in the same position as at present. There was no intention of having them represented in Parliament. As regards restrictions, these would, of course, be removed on transfer except those imposed on veterinary grounds.

He was anxious to provide Union personnel to assist in the schemes—would the present proposals prevent his senior engineers from supervising and prohibit the use of Union water-boring experts?

Another point was that he could not agree, if Union funds were contributed, to payments to natives employed on works financed from these at higher rates than those paid to natives in the Union engaged on similar works, i.e., a maximum of 22*s*. 6*d*. a month. He would like to know the amounts required on a fifty per cent basis.

Sir William Clark thought it unlikely that anyone would expect acquiescence to be unanimous. The Chiefs could exert great influence if persuaded of the advantages of transfer. He agreed that Basutoland would be difficult to influence and it could not be taken for granted that matters would be easy as regards Swaziland and some of the Chiefs in the Bechuanaland Protectorate, e.g., Tshekedi and Bathoen. This was however looking very far ahead as the first step was co-operation towards securing goodwill: as regards this he was prepared to undertake that officials would be instructed to give the fullest publicity in respect of any assistance rendered by the Union. Sir William Clark saw no difficulty in utilizing the services of the senior engineer of the Native Affairs Department in an advisory capacity. As regards water-boring experts and other technical personnel, he thought the best way would be to second them to the Administration concerned and to pay for their services from the joint grants. As regards payment of labour it was necessary in regard to schemes financed in whole or part from the Colonial Development Fund to pay the ordinary rates for unskilled labour prevailing in the Districts. If the Minister envisaged the engagement of unpaid labour whether voluntary or otherwise on the schemes this would not be feasible.

The Minister said that he did not envisage enforced or unpaid labour but that rates of payment should be as in the Union 6*d*. a day plus food or 22*s*. 6*d*. a month without food.

Sir William Clark said that the Basutoland anti-erosion scheme was based on a payment of 6*d*. a day plus food and he therefore assumed that the rates suggested by the Minister were suitable, but he would ascertain from Resident Commissioners the position.

As regards the amounts required, the Basutoland anti-erosion scheme contemplated expenditure of £161,106 spread over a period of ten years; and a water-boring scheme was in preparation in the Bechuanaland Protectorate to cover a period of five years. As regards Swaziland a scheme for dams was in course of preparation by a Union expert and Mr. Thornton. He would have a memorandum sent to show the position as at present but he thought it would be safer to estimate as follows (though some expenditure on two schemes would occur in the present financial year):—

		Union Contribution.
	£	£
Basutoland anti-erosion	32,000	16,000
Bechuanaland Protectorate water-boring	25,300	12,500
Andara weir	2,000	1,000
Levels	2,700	1,400
Surveys, etc.	3,300	1,600
Swaziland dams, say	5,000	2,500
Total		£35,000

10991/295. No. 41.

TELEGRAM

to

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Sent 5.15 p.m., 21st February, 1936.)

[*Answered by No. 43.*]

No. 26. Confidential. Following from Harding: *Begins.*—Secretary of State approves draft statement enclosed in Fforde's letter of 15th January* subject to following suggested alterations:—For whole of first paragraph substitute following:

"In the course of discussions in May last between Mr. Thomas, then Secretary of State for Dominion Affairs, and General Hertzog, the Prime Minister of the Union of South Africa, it was agreed that endeavour should be made to establish closer co-operation between His Majesty's Government in the Union and the Administrations of the High Commission Territories in matters affecting the Territories' interests. In pursuance of this aim the Union Government have volunteered to assist financially and in other ways with certain schemes for improving conditions in the native areas of the Territories."

In second paragraph substitute;

" the United Kingdom Government " for " His Majesty's Government ": delete " not only most generously "; and for " but have " substitute " and have also ".

In third paragraph delete;

" most generously ".

In first sentence of fourth paragraph add;

" in native areas " after " water " and substitute following for last sentence;

"This question is now being investigated, and the Union Government have offered to provide half the expenditure involved if a satisfactory scheme for the purpose can be arranged."

Add following final paragraph;

"His Majesty's Government in the United Kingdom are convinced that the co-operation which His Majesty's Government in the Union have thus most generously offered will be productive of considerable benefit to the three Territories and they feel sure that the offers will be cordially welcomed by the native population."—*Ends.*

10991/295. No. 42.

TELEGRAM

to

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Sent 5.15 p.m., 21st February, 1936.)

Personal. My confidential telegram No. 26 of 21st February†. Following from Harding:—

Begins.—Ground for proposing omission of second sentence of first paragraph of draft statement is to avoid any possible suggestion that attempt is being made to buy off native opposition to transfer. For similar reason it is thought preferable to refer once only, i.e., in concluding paragraph to generosity of Union Government's offer. Other alterations are I think self-explanatory. As regards Basutoland anti-erosion Colonial Development Advisory Committee have agreed to a free grant of 50 per cent of cost of scheme on the assumption that Union Government will provide the other half. Official communication to this effect follows in due course.—*Ends.*

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* No. 39. † No. 41.

10991/300. No. 43.

TELEGRAM
from
HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received 12.50 p.m., 29th February, 1936.)

No. 22. 29th February. Confidential. Following for Harding:—

Begins.—Your confidential telegram No. 26 of the 21st February*. Report on my meeting with Grobler on the 25th February went by yesterday's air mail. He accepted the Secretary of State's view(s) re 50/50 basis (of) contribution and control by High Commissioner. Understand from Secretary of Native Affairs that Cabinet has approved draft statement with the following modifications (*a*) second paragraph omit " not only to Basutoland but also to South Africa as a whole ", (*b*) third paragraph in sentence beginning " The improvement " omit " not only " and remainder of the sentence after the word " Protectorate ". I saw no reason for objecting to these omissions and so informed Smit and agreed that publication of statement in the Territories should be simultaneous, date not yet fixed on which Union Budget will be laid on the table. Smit also informed me that Treasury have been requested to insert the necessary financial provisions in the Estimates and that Hertzog's view is that it is undesirable for the Union Government to stipulate safeguards or control of expenditure as they should trust to the good faith of the British Government in implementing the undertaking. I took the opportunity of explaining again that as regards financial contributions by the Union these could only be regarded as possible means of influencing native opinion favourably towards the Union Government and that the utmost I could do would be to ensure that full information should be given the natives of any such contributions.—*Ends.*

10991/301. No. 44.

TELEGRAM
from
HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received 9.58 a.m., 7th March, 1936.)

[*Answered by No. 45.*]

No. 24. 7th March. Confidential. Following for Harding:—

Begins.—My confidential letter of the 5th March† regarding the date of publication of draft statement. Union Government states that the Union Estimates will be introduced in the House of Assembly on Wednesday, 25th March. Arrangements are therefore being made for statement to be communicated to Chiefs in the High Commission Territories on that date.—*Ends.*

10991/301. No. 45.

TELEGRAM
to
HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Sent 8 p.m., 10th March, 1936.)

[*Answered by No. 48.*]

No. 32. Confidential. Your telegram No. 24, 7th March‡. Following from Harding:—

Begins.—Are we right in thinking that text of statement will actually be published in Territories on 25th March and that Union Government will make similar announcement in House of Assembly on that date? If so it is contemplated that statement should be made public here on same day probably by means of answer in House of Commons. —*Ends.*

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* No. 41. † No. 50. ‡ No. 44.

10991/303. No. 46.

DESPATCH
from
HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received 11th March, 1936.)

(No. 135.)

High Commissioner's Office, Cape Town,
27th February, 1936.

SIR,

At the interview in Pretoria on the 5th November, 1935, between Sir Cecil Fforde and Mr. Priestman and the Union Minister and Secretary for Agriculture and Forestry, a report of which is on record in the Dominions Office*, it was stated by Colonel Reitz that, although the Union Government were unwilling to provide by legislation for the representation of the High Commission Territories on the various Union Control Boards, it might be found practicable to appoint such representatives to attend meetings of the Boards in an advisory capacity.

2. The matter has been further discussed with the Union Department of Agriculture and the Resident Commissioners, and the Minister's approval has now been received for representatives of the Territories (with alternates) to attend meetings of the Boards of Control as indicated below:—

1. *Livestock and Meat Industries:*
   Chief Veterinary Officer of the Bechuanaland Protectorate (MR. J. H. N. HOBDAY).
   Alternate: Principal Veterinary Officer, Swaziland (MR. W. A. ELDER).

2. *Hides and Skins:*
   Chief Veterinary Officer of the Bechuanaland Protectorate (MR. J. H. N. HOBDAY).
   Alternate: Principal Veterinary Officer, Swaziland (MR. W. A. ELDER).

3. *Dairy Industry:*
   Dairy Expert and Inspector, Bechuanaland Protectorate (MR. R. ENGLAND).
   Alternate: Principal Veterinary Officer, Swaziland (MR. W. A. ELDER).

4. *Wheat:*
   Director of Agriculture, Basutoland (MR. R. W. THORNTON).
   Alternate: Agricultural Officer, Basutoland (MR. L. F. WACHER).

5. *Maize:*
   Agricultural Officer, Basutoland (MR. L. F. WACHER).
   Alternate: Director of Agriculture, Basutoland (MR. R. W. THORNTON).

6. *Wool:*
   Director of Agriculture, Basutoland (MR. R. W. THORNTON).
   Alternate: Principal Veterinary Officer, Basutoland (MR. G. T. HENDERSON).

7. *Tobacco:*
   Chairman of Board of Directors of Swaziland Co-operative Tobacco Company (MR. V. O. KING).
   Alternate: Deputy Resident Commissioner, Swaziland (MR. H. B. A. MCCARTER).

I have, &c.,
W. H. CLARK,
High Commissioner.

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* Enclosure in No. 29.

10991/306. No. 47.

DESPATCH

from

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received 11th March, 1936.)

(Bechuanaland Protectorate.)

(Swaziland.)

(No. 137.)

High Commissioner's Office, Cape Town,
27th February, 1936.

SIR,

With reference to the third paragraph of my despatch No. 481 of the 9th August, 1935*, I have the honour to transmit herewith a copy of a letter from the Union Department of Agriculture and Forestry intimating that His Majesty's Government in the Union have agreed to extend to the Bechuanaland Protectorate and Swaziland the railway rebate on chilled beef for export, on the basis of fifty per cent of the railway rate operative on the 1st February, 1935, which is applicable to chilled beef exported over the South African Railways from Southern Rhodesia and the Union.

2. I have expressed to the Department my appreciation of this concession, and have conveyed the decision to the Resident Commissioners of the Bechuanaland Protectorate and Swaziland.

I have, &c.,
W. H. CLARK,
High Commissioner.

Enclosure in No. 47.

The Administrative Secretary,
High Commissioner's Office,
Cape Town.

Department of Agriculture and Forestry, Cape Town,
24th February, 1936.

SIR,

Rebate on Chilled Beef.

With reference to previous correspondence in connexion with the above subject, I beg to advise that the Treasury has now approved that the railway rebate on chilled beef for export, applicable to Southern Rhodesia and to the Union, be also applied to the Territories of Bechuanaland and Swaziland. The necessary provision has been made on the estimates of 1936-37 and the rebate will take effect as from the 1st April, 1936.

The rebate will be on the basis of 50 per cent of the railway rate operative on the 1st February, 1935, as in the case of Southern Rhodesia, and will apply only on chilled beef for export overseas conveyed over the railway lines owned and controlled by the South African Railways and Harbours.

An arrangement has been come to with the Railways Administration whereby the rebate will be allowed by that Administration which will subsequently claim from the Treasury. Exporters will be required to furnish a certificate of origin on each consignment to the Railway Administration for the rebate to become operative.

I have, &c.,
P. R. VILJOEN,
Secretary for Agriculture and Forestry.

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* 10315/32: not printed.

10991/304. No. 48.

TELEGRAM

from

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received 2.19 p.m., 13th March, 1936.)

No. 30. 13th March. Confidential. Following for Harding:—

Begins.—Your confidential telegram No. 32 of the 10th March*. Text of statement as sent to you in my letter of the 5th March† will be published in the Territories on the 25th March. Minister of Finance in the course of his budget speech on that date will make similarly, in condensed form, statement prepared by Native Affairs Department, Secretary of which has supplied me with copies of the text which follows in my confidential telegram No. 31‡.—*Ends.*

10991/304. No. 49.

TELEGRAM

from

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received 2.12 p.m., 13th March, 1936.)

No. 31. 13th March. Confidential. Following for Harding:—

Begins.—My telegram No. 30 confidential§. Following is text of statement to be made by Havenga. *Begins.*—A sum of £35,000 is to be placed on Loan Estimates as a contribution towards certain measures contemplated by the Imperial Government for combating soil erosion and for the development of water supplies in the Protectorate(s).

In the course of discussions in May last between Mr. Thomas, then Secretary of State for Dominion Affairs, and the Prime Minister, it was agreed that endeavour should be made to establish closer co-operation between the Administration of the High Commission Territories and the Union Government in matters affecting the Territories' interests. In pursuance of this aim the Union Government have volunteered to assist financially and in other ways with certain schemes for the improvement of the conditions in native areas of the Territories. In many directions co-operation already exists between Government Departments in the Union and the Administration of the Protectorates. The object is to secure yet closer co-operation and as was said by Mr. Thomas " to make the natives feel that the Union Government are working in concert with the local administrations with a real and generous desire to develop and improve the conditions in the Territories ".—*Ends.*

10991/305. No. 50.

SIR WILLIAM CLARK (HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND)

to

SIR EDWARD HARDING (DOMINIONS OFFICE).

(Received 18th March, 1936.)

(Confidential.)

High Commissioner's Office, Capetown,
5th March, 1936.

MY DEAR HARDING,

With reference to my confidential telegram No. 22 of the 29th February|| about co-operation with the Union Government, I enclose herewith a copy of a letter which has been received from the Secretary for Native Affairs together with a copy of the reply from this Office.

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* No. 45. † No. 50. ‡ No. 49. § No. 48. || No. 43.

I also enclose a copy of the note on the cost of the various schemes referred to in Smit's letter, and a copy of the statement to the natives in its final form.

Yours, etc.,
W. H. CLARK.

Enclosure 1 in No. 50.

Department of Native Affairs, Capetown,
29th February, 1936.

SIR,

Improved Co-operation between the High Commission Territories and the Union.

With reference to our conversation yesterday, I am directed by the Honourable the Minister of Native Affairs to inform you that he has discussed this matter with the Cabinet, and that the Cabinet has approved of the proposals set forth in your statement headed " Cost of Schemes, etc.", and that a sum of £35,000 is being placed on the Estimates for the ensuing financial year to meet the Union Government's contribution.

The Cabinet has also agreed to the terms of the memorandum which was handed to Mr. Grobler by Sir William Clark, but I am to suggest that the following words be deleted therefrom:—

At the top of page 2: the words—

" not only to Basutoland but to South Africa as a whole ".

At the top of page 3: the words—

" not only "

and

" but also the adjacent . . . . dessication ".

I am also to request that the contents of the memorandum should not be communicated to the natives until the date on which the Estimates of expenditure are placed before Parliament. This date will be communicated to you as soon as possible. It will be appreciated that the information cannot be published until the Estimates are tabled in Parliament, and it is therefore suggested that the notification to the natives and the announcement in the House of Assembly should take place simultaneously.

As requested, I have instructed the department's engineer to submit full details of the Andara scheme.

I have, &c.,
D. L. SMIT,
Secretary for Native Affairs.

Enclosure 2 in No. 50.

High Commissioner's Office, Capetown,
5th March, 1936.

SIR,

I am directed by the High Commissioner for Basutoland, the Bechuanaland Protectorate and Swaziland to acknowledge the receipt of your letter of the 29th February, and to inform you that His Excellency notes that His Majesty's Government in the Union of South Africa has approved of the proposals under which the Union Government will co-operate in certain development schemes in the High Commission Territories and that a sum of £35,000 is being placed on the Estimates for the coming financial year to meet their contribution.

2. His Excellency also notes that the Union Government agrees to the terms of the statement regarding co-operation with certain specified amendments. These amendments are acceptable to His Excellency and have been embodied in the statement.

3. In accordance with the wishes of the Union Government, the statement will not be communicated to the natives before the date on which the Estimates of expenditure are placed before Parliament.

I have, &c.,
H. E. PRIESTMAN,
Administrative Secretary
to the High Commissioner.

The Secretary for Native Affairs,
Capetown.

Enclosure 3 in No. 50.

MEMORANDUM.

In the course of the discussion in May last between Mr. Thomas, then Secretary of State for Dominion Affairs, and General Hertzog, the Prime Minister of the Union of South Africa, it was agreed that endeavours should be made to establish closer co-operation between His Majesty's Government in the Union of South Africa and the Administrations of the High Commission Territories in matters affecting the Territories' interests. In pursuance of this aim the Union Government have volunteered to assist financially and in other ways with certain schemes for the improvement of conditions in the Native areas of the Territories.

As regards Basutoland it will be remembered that in the Report of January, 1935, the Commission appointed by the Secretary of State for Dominion Affairs to enquire into the financial and economic position of that Territory recommended that the United Kingdom Government should make a grant for anti-soil erosion work in Basutoland. Recognizing the urgency and importance of this work the Union Government have offered to assist financially to the extent of half the cost and have also placed the experience gained by their engineers who have been engaged on similar works in the Transkei and other parts of South Africa at the disposal of the Basutoland Administration in the carrying out of the scheme.

As regards the Bechuanaland Protectorate, the Commission which reported in 1933 on the economic and financial position of that Territory stated that at every stage of their enquiries, whether they related to agriculture, to cattle or to human health and amenities, they realized that the absolutely essential condition to any progress was the improvement of the existing water supplies and the provision of new supplies. The Commission suggested that improvement should be brought about by the provision of wells and dams and by the clearance of the main channels into which the River Okavango divides its delta. The improvement of these water supplies would benefit the Protectorate. The Union Government have offered to place their wide experience in regard to the provision of water supplies at the disposal of the Administration of the Protectorate and also to assist financially to the extent of half the cost of such works as may prove to be necessary.

As regards Swaziland, the Commission which reported in 1932 on the economic and financial position of that Territory stressed the necessity for measures for the conservation of water in the Native areas, particularly in the low veld, by the provision of dams. This question is now being investigated, and the Union Government have offered to provide half the expenditure involved if a satisfactory scheme for the purpose can be arranged.

His Majesty's Government in the United Kingdom are convinced that the co-operation which His Majesty's Government in the Union of South Africa have thus most generously offered will be productive of considerable benefit to the three Territories and they feel sure that the offer will be cordially welcomed by the Native population.

Enclosure 4 in No. 50.

COST OF SCHEMES FOR DEVELOPMENT OF NATIVE AREAS IN THE HIGH COMMISSION TERRITORIES MENTIONED IN DRAFT STATEMENT HANDED TO THE MINISTER OF NATIVE AFFAIRS BY THE HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND ON TUESDAY, THE 25TH FEBRUARY.

Basutoland Anti-Erosion Scheme.

Total estimated cost £161,105 spread over a period of ten years.

	£
Cost in 1936-37	32,605
Next four financial years at £18,000 p.a.	72,000
Next five financial years at £11,300 p.a.	56,500
	£161,105

On a fifty per cent basis the contribution of the Union Government for the year 1936-37 would amount to about £16,000.

Bechuanaland Protectorate.

(*a*) *Water Development.* A scheme involving expenditure of £25,300 has been approved by the Colonial Development Advisory Committee: on a fifty per cent basis the contribution of the Union Government for the year 1936-37 would amount to £12,500. A revised scheme is in course of preparation by the Resident Commissioner involving contributions spread over a period of five years for the provision of additional dams and wells but details have not yet been received.

(*b*) *Okavango Waterways.* Insufficient data exists to enable an estimate to be framed of the cost of developing this water supply. It is proposed therefore to provide only for the cost of preliminary surveys leaving open for subsequent consideration in the light of estimated costs the advantages to be derived and other factors of the question of proceeding with a scheme. The cost of preliminary investigations is estimated approximately at £8,000 which would provide for—

	£
(1) gauging weir at Andara	2,000
(2) taking of levels from Maun along the Botletle and Thamalakane Rivers	500
(3) contour survey of channels of Santantadibe River	2,200
(4) clearing channels, aerial surveys, etc.	3,300

On a fifty per cent basis the contribution of the Union Government in 1936-37 would be £4,000.

Swaziland.

A scheme for the provision of dams in native areas is in process of formulation by a senior engineer of the Union Native Affairs Department and the Agricultural Adviser to the High Commissioner.

It is suggested that a sum of £5,000 should be provided to enable any approved scheme to be inaugurated. The contribution of the Union would therefore be £2,500.

Summary.

Contributions to be made by the Union Government in 1936-37.

	£
Basutoland Anti-erosion scheme	16,000
Bechuanaland Protectorate—	
(1) water development	12,500
(2) Okavango schemes	4,000
Swaziland dams	2,500
	£35,000

As regards the control of the works, this would vest in the Resident Commissioner of the Territory concerned. The services of a senior engineer of the Union Native Affairs Department will be made available for general supervision and advice when necessary. Other Union officials as available and required will by agreement be seconded, their salaries, etc., being met from the funds provided for the schemes in connexion with which they are employed.

P.Q. 10991/20. No. 51.

HOUSE OF COMMONS.

EXTRACT FROM OFFICIAL REPORT OF 25TH MARCH, 1936.

South Africa.

59. MR. DAVID GRENFELL asked the Secretary of State for Dominion Affairs whether he has any further statement to make on the subject of closer co-operation with the Union Government in matters affecting the High Commission Territories in South Africa?

THE SECRETARY OF STATE FOR DOMINION AFFAIRS (MR. MALCOLM MACDONALD): It will be remembered that, in the course of discussions in May last between my predecessor and General Hertzog, it was agreed that endeavours should be made to establish closer co-operation between the Administrations of the High Commission Territories and the Union Government in matters affecting the Territories. In pursuance of this aim, the

Union Government have recently offered to assist financially and in other ways with certain schemes for combating soil erosion and for developing water supplies which had been recommended by Sir Alan Pim, who recently reported on economic conditions in the Territories. The offer has been accepted by the High Commissioner, and I understand that the Union Government are placing a sum of £35,000 on their Estimates for the coming financial year for these purposes. This sum amounts to 50 per cent. of the total expenditure contemplated for next year on the particular items concerned. His Majesty's Government in the United Kingdom are convinced that the co-operation which His Majesty's Government in the Union have thus offered will be productive of considerable benefit to the three Territories. A full statement of the proposals is being communicated to the local native authorities.

MR. DUNCAN: Is one of the territories Bechuanaland?

MR. MACDONALD: Yes, Sir.

10991/313. No. 52.

TELEGRAM

from

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received 3.22 p.m., 25th April, 1936.)

[*Answered by No. 58.*]

No. 61. 25th April. Confidential. My telegram of the 13th March No. 30 confidential to Harding*, and letters of the 9th April† and 20th April† to Machtig.

Reaction of the Chiefs in the Territories to statement regarding the proposed financial contribution by the Union Government to native development work is generally adverse to acceptance. While the Paramount Chiefs of Basutoland and Swaziland would probably not refuse offer outright, Richards, in case of the former, thinks that probable outcome would be not only to prejudice endeavours to secure atmosphere of goodwill towards the Union Government but to wreck anti-erosion scheme which depends on the co-operation of the people and permission by them to undertake anti-erosion work on their lands.

As regards Swaziland, after discussion with Marwick, I think it possible that the Chief might accept the offer but he might add a proviso that in so doing he must not be regarded as in any way committed to transfer. Such proviso would tend to raise the issue of transfer and might embarrass the Union with their supporters.

As regards the Bechuanaland Protectorate, Batawana have refused the offer in respect of Okavango scheme and Tshekedi was reported in a broadcast from Daventry also to be opposed to acceptance but the Resident Commissioner has not yet confirmed this attitude. Rey considers that assistance should not be accepted until the matter has been fully explained to the natives Advisory Council and their views elicited. Richards thinks that offer might have been acceptable had statement indicated that anti-erosion work was of equal importance to the Union but as you are aware the Union Government objected to inclusion in the statement of any suggestion to that effect although this argument has been utilized in debate(s), see my despatch Dominions No. 157 of the 23rd April‡.

I have discussed the position confidentially with the Secretary for Native Affairs. He stated that he personally had considered it inexpedient for the Union to put forward financial offer this year as atmosphere would be affected by reactions of Native Representation Bill nor had he much faith in it in any circumstances. He was therefore not surprised at the result. His opinion was that the best course would be for the Union to proceed with voting for the contribution which could not be withdrawn at this stage without creating political difficulties, and then not to hurry the matter but to recognize that if native opinion in the territories remains opposed to contribution the scheme had better be dropped quietly. He promised to consult the Prime Minister, Minister for Native Affairs being absent ill.

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* No. 48. † 10991/311: not printed. ‡ 9059/226: not printed.

If, as is probable, Paramount Chiefs of Basutoland and Swaziland ask for my advice before giving definite reply to proposals in the statement I should feel bound as at present instructed to press for their acceptance of the Union offer but there would be no utility in pursuing this course if these Chiefs are unable to carry with them popular opinion, nor would it be conducive to creating goodwill which is the objective of the policy.

In the circumstances I suggest that I should be empowered to reply on the following lines:—As indicated in statement His Majesty's Government on my advice had felt sure that offer of financial assistance by the Union Government would be cordially welcomed by the native population because of benefit to the territories which such assistance would provide. If however Paramount Chiefs definitely consider that at this stage native population would be opposed to acceptance of such financial aid, His Majesty's Government will so inform the Union Authorities.

As regards communication to the Union Authorities I suggest that I should inform them, as they are aware, while I considered their original proposals would have been unacceptable to the native population of the territories, I had hoped that amended scheme providing for control by the local administrations might be accepted. After consultation with the Chiefs it is however evident that provision of financial aid to the territories at this stage would be misunderstood by the native population and create suspicion and hostility instead of atmosphere of goodwill which it is the aim of both Governments to produce. Furthermore it is considered probable that particular schemes of development which it is proposed to initiate and which depend on the co-operation of the Chiefs and people in the work might not be able to proceed on the basis of a joint contribution by both Governments owing to hostility which this would excite amongst the local native inhabitants.

In the circumstances His Majesty's Government are forced to the conclusion that the time is not yet ripe for this form of co-operation and suggest that for the time being goodwill of the Union might be demonstrated by loans or secondment of Union officials to assist in the work of development and by removal of the restrictions on trade and in such other ways as may be agreed upon by the two Governments.

It is of course possible that Ministers may not take matters so philosophically as the Secretary for Native Affairs. Fortunately there can be no question of our having misled them, as in my talks with Grobler I have always been frank in expressing my doubt about the efficacy of financial contributions as means of acquiring goodwill and warned him about the possible difficulties and in our last interview he showed considerable scepticism himself. Nevertheless Ministers may resent this further manifestation of native distrust of the Union and if they take it as proof that conciliation is doomed to failure they might think it necessary to reconsider their whole attitude towards transfer. I feel very certain however that they will be in no hurry and I should be greatly surprised if they proved anything but most reluctant in the current circumstances to commit themselves to any action which might impair their present amicable relations with our Government.

I have offered to see the Prime Minister if he desires it and in any case propose to have a general talk with him on policy before I leave. I should be grateful therefore to receive your views as soon as may be convenient.

10991/314.

No. 53.

TELEGRAM

from

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received at 3.48 p.m., 27th April, 1936.)

[*Answered by No. 58.*]

No. 63. 27th April. Confidential. My telegram of the 25th April, No. 61, confidential*. Acting Resident Commissioner Basutoland has forwarded letter from the Paramount Chief indicating strong opposition to acceptance of financial assistance from the Union Government on the grounds that this arises out of the Thomas-Hertzog discussions regarding incorporation of the territories in the Union. He states that the

* No. 52.

Basutos would prefer to divest themselves of all possessions in order to prevent contribution being paid by the Union Government and to enable Basutos to retain soil and territory. Sims suggests that Paramount Chief's fear might be overcome by informing him—

(*a*) Union grant offered at the instance of the Imperial Government,

(*b*) must not be regarded as a pledge in respect of incorporation,

(*c*) danger of Union Government's adopting restrictions on Basuto labour and produce in the event of refusal of offer.

(*a*) is incorrect: for reasons given in above telegram I consider (*b*) undesirable: as regards (*c*) I think that the Union Government would not take any such measures until the question of transfer had been specifically put to the territories and refused by latter and in any case I doubt whether restriction on labour would be feasible as Basutoland is important reservoir for farm labour in the Orange Free State and for the mines. In the circumstances see no reason for modifying proposal(s) in my telegram under reference but you will observe that the Paramount Chief is showing even more pronounced hostility to the proposal(s) than I had then anticipated and the difficulty of securing acceptance and drawback to applying pressure would be proportionately greater.

10991/315.

No. 54.

TELEGRAM

from

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received at 6.22 p.m., 30th April, 1936.)

[*Answered by No. 58.*]

No. 66. 30th April. Confidential. Reference to my telegram confidential No. 63 of the 27th April*. Resident Commissioner Swaziland reports that he has been informed by Paramount Chief that the vast majority of chiefs and commoners are opposed to acceptance of offer of pecuniary assistance from the Union. Chief expressed appreciation of evidence of goodwill but pointed out that most effective gesture would be removal of restrictions on cattle exports.

Have also received from the Resident Commissioner Bechuanaland Protectorate text of letter from Tshekedi. Acting Chief expressed wish for maintenance of cordial relations with the Union. He refers to assistance rendered by the Bechuana who supply cheap labour to the gold mines and hopes that the Union will open market particularly Johannesburg meat market to Protectorate cattle. Suggestion that Protectorate should become a portion or a Protectorate of the Union strongly opposed, they desire to remain under the direct protection of Great Britain. Bamangwato view with alarm and suspicion acceptance of pecuniary or other assistance from the Union which they consider would place them under debt and obligation to the Union Government. Recent and proposed Union legislation has made more remote than ever free and willing consent of the natives of the Bechuanaland Protectorate to transfer. Bamangwato register solemn protest against the present proposal and ask that this may be conveyed to the Secretary of State.

Resident Commissioner states that this letter has appeared verbatim in the Star newspaper but copies of the issue not yet received here.

Report has not yet been received from the Resident Commissioner regarding source of communication containing Tshekedi's views against acceptance of Union contribution which was published as wireless broadcast from Daventry on 22nd April. Understand from Reuter's Capetown that message was not transmitted through them but that it was received at their London agency from the United Kingdom Labour Party.

Resident Commissioner will be here to-morrow.

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* No. 53.

10991/316. No. 55.

TELEGRAM

from

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received 3.20 p.m., 1st May, 1936.)

[*Answered by No. 58.*]

No. 68. 1st May. Confidential. My telegram No. 66 confidential of the 30th April*. Rey who has arrived here reports that Tshekedi's letter was adopted by the tribe at a Kgotla meeting.

10991/316. No. 56.

TELEGRAM

to

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Sent 2.45 p.m., 3rd May, 1936.)

[*Answered by No. 57.*]

No. 53. Confidential. Your telegram No. 68† and previous telegrams. Hope to send reply to-morrow or Tuesday so that there may be time for you to consider position before leaving. In the meantime I should like to know whether Secretary for Native Affairs has yet consulted Prime Minister or if you have seen him yourself and if so what Hertzog's reactions are. It would be helpful if I could have this information early to-morrow.

10991/317. No. 57.

TELEGRAM

from

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received 11.45 p.m., 3rd May, 1936.)

[*Answered by No. 58.*]

No. 69. 3rd May. Confidential. Your telegram No. 53, confidential‡. Secretary for Native Affairs had stated that he had conveyed to the Prime Minister my communication and that the latter proposed to discuss the subject with me but so far the Prime Minister has not suggested interview and pending instructions from you I had not thought it desirable to open the question. On receipt of your above telegram I broached the subject to Smuts who happened to be dining with me. His personal view coincided with those of Secretary for Native Affairs that as regards the Union policy financial provision should be made as arranged and the matter later quietly dropped if necessary. He suggested that I should see the Prime Minister which I will do to-morrow if possible or at any rate at the first opportunity and report. Smuts said he would speak to the Prime Minister about the matter.

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* No. 54. † No. 55. ‡ No. 56.

10991/317. No. 58.

TELEGRAM

to

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Sent 11.40 p.m., 4th May, 1936.)

[*Answered by No. 59.*]

No. 55. Confidential. Your telegrams No. 61*, 63†, 66‡, 68§ and 69‖. Strong opposition of Chiefs to proposals causes me much concern and has come somewhat as a surprise in view of your telegram No. 201 of 29th November¶ indicating that Resident Commissioners considered that objections would largely disappear if Union offer were subjected to certain modifications which were duly effected.

In the event it was agreed by you with Minister of Native Affairs that notification of proposals to natives and announcement in House of Assembly should be simultaneous (see correspondence enclosed in your letter of 5th March**).

As regards course proposed by you following difficulties present themselves to me:—

(*a*) You suggest that Union Government should now be informed that time is not yet ripe for this form of co-operation and invited to show their goodwill by loan of officials, removal of trade restrictions, etc. But would not immediate withdrawal of proposal be inconsistent with agreement between my predecessor and General Hertzog to extend co-operation over the widest possible field? You will appreciate that I should be most reluctant to take any action that might be construed as an attempt to evade or go back on that agreement, which called in doubt our good faith, and might lead to re-opening of whole question of transfer.

(*b*) As you know, Colonial Development Fund grant for anti-erosion was made on understanding that half cost would be borne by Union Government. I fear that there would be great difficulty in securing grant for whole cost merely on the ground that native inhabitants prefer not to accept that condition. In the circumstances how would it be possible to finance scheme which is clearly of vital importance to territory? Incidentally similar question would presumably arise in case of development schemes in other two territories.

(*c*) Apart from these difficulties, would it not be very prejudicial to authority and prestige of the Government in the eyes of native opinion to abandon our position under pressure from Chiefs in a matter of this kind? Union proposals have passed beyond the stage of offer and it has been explained both in the House of Commons and the House of Lords that Union offer to make provision in Estimates has been accepted and that Government here are convinced that proposals would benefit territories.

In the light of these considerations I am forced to conclusion that we are bound to make a real effort to carry through this particular method of implementing Hertzog-Thomas agreement. I had never contemplated that last word as to acceptance or otherwise should necessarily rest with natives, and Administrations of territories have I feel a responsibility in persuading natives, in their own interests, to co-operate. On the other hand I recognize that matter should not be positively forced upon natives and that it may in any case be necessary to review whole situation in the light of experience of the working of the arrangement.

I would suggest in circumstances that when you see General Hertzog you should explain that my attitude with regard to policy of co-operation is same as that of my predecessor and that it is my earnest desire that the policy may achieve success: that I agreed to the recent proposals because they appeared to be in the spirit of the agreement reached last May and that despite the first reactions of the native authorities in the territories towards the proposals I am anxious that the Administrations should use their best endeavours to secure the co-operation of the natives, and propose to instruct them accordingly. At the same time General Hertzog will no doubt agree that it would be unwise to press this particular method of co-operation in the face of strong opposition of the Native Chiefs, if this opposition is maintained, since to do so would only create

* No. 52. † No. 53. ‡ No. 54. § No. 55. ‖ No. 57. ¶ No. 32. ** No. 50.

bad feeling towards the Union Government, and thus nullify the object of the co-operation policy. Moreover to do so would arouse strong opposition in the House of Commons here. There is the further practical point made by Richards that continued opposition of the natives in Basutoland might render impracticable the carrying out of the anti-erosion scheme. It must be recognized therefore that attempt to carry out proposals may not succeed and in that event I hope that Union Government will realize our difficulties. In that case the line suggested in your talk with the Chief Secretary of the Native Affairs Department would appear to be the best; and I gather from your telegram No. 69* that this line would have the general approval of Smuts.

Subject to the outcome of your discussion with General Hertzog I suggest that it should be made clear to Chiefs in appropriate terms—

(1) that Union offer is unconditional and does not impair pledges already given by His Majesty's Government in the United Kingdom to consult the inhabitants of the territories before any decision is reached as to transfer as well as to give the House of Commons an opportunity of expressing their views and will not be regarded as in any way committing Chiefs on that question (see answers given in Parliament)

(2) that you accepted Union offer to make provision in the Estimates since you were convinced that carrying out of works on basis of that offer will be productive of considerable benefit to the territories and that you confidently expect the loyal and whole-hearted co-operation of the Native Chiefs with the local Administrations in this proposal. It might also be pointed out, in suitable terms, that on the one hand failure to accept offer would probably make it difficult to carry out to the full the important schemes contemplated, while on the other acceptance does not mean that the Administrations would not continue to do their best in negotiation with the Union Government to obtain other concessions designed to improve economic position of territories. (As to this, Tshekedi and the other Chiefs will presumably appreciate that they cannot consistently ask for concessions in the Union markets which the Union Government are unwilling to give and at the same time adopt the attitude that the territory should be placed under no obligation to the Union Government.)

Personal.—This is a case where I should have preferred that you should personally have explained position to the native authorities in each of the territories. I appreciate that this is not possible at present. If you think it advisable, you could let it be known to the Resident Commissioners before you leave Capetown that whilst you are anxious that everything possible should be done by them in the meantime to persuade natives to reconsider their attitude, you realize that position may develop which it may be desirable for you to discuss when you are at home.

10991/319. No. 59.

TELEGRAM

from

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received 5.45 p.m., 6th May, 1936.)

[*Answered by No. 61.*]

No. 72. 6th May. Your telegram of the 5th May No. 55 confidential†. I am afraid that my telegram No. 61‡ did not sufficiently develop the language which I was proposing should be used to the Union Government. I did not intend to give the impression that I was recommending abrupt withdrawal from the Union offer and in fact in putting the matter before Smuts on Monday I spoke practically on the lines of your telegram. Since receiving it I have now seen the Prime Minister and explained your attitude to him on the lines indicated in the telegram under reply. Especially I made it clear (1) that the Administration on my instigation had used every endeavour

* No. 57. † No. 58. ‡ No. 52.

when announcement was first made to allay suspicion and impress the natives with the importance of the benefits offered; (2) that on your instruction we would make further efforts on those lines but (3) that a point might be reached at which pressure would defeat the end in view. General Hertzog expressed full agreement with this view. He asked me, entirely on his own initiative, to assure you that he regarded neither you nor myself as in any way responsible for what had happened. He did not make any suggestion that his Government had been misled nor did he appear to be worried over the matter. He attributed the attitude of the natives to injudicious advice given to them by their friends in the Union who have been organizing opposition to Native Representation Bill. If it should eventually seem best not to proceed with contribution, proposal would be allowed to drop quietly. Incidentally the Prime Minister made a curious admission as to the extent of the opposition in the Union to incorporation especially among Malanites.

2. I regret that extent of native opposition to the scheme was not foreseen but as stated in my telegram No. 201 of the 29th November* Resident Commissioner at my Pretoria conference thought that on 50/50 basis scheme should go through. In any case we should have exposed ourselves to a good deal of suspicion by the Union Government of not genuinely pursuing co-operation if we had rejected their offer on what would then only have been a matter of opinion: in fact they would probably have insisted on trying experiments and be doubly suspicious of us if it had failed. They are naturally reluctant to admit extent of native dislike of them. Native feeling has also beyond question been exacerbated since the New Year by the course of the controversy over the Union Native Bill.

3. As regards possible damage to prestige you will recall that in the memorandum given to natives no reference was made to the offer having been accepted by His Majesty's Government in the United Kingdom and it was made clear that the offer was volunteered by the Union Government. In these circumstances if the offer eventually lapses I do not think that our authority will suffer, always provided that we do not in the meantime press the matter unduly and later have to withdraw. From this point of view I think sentence in section of your telegram respecting language to be used to the Chiefs which reads (and that you confidently expect loyal and wholehearted co-operation of native Chiefs with local administrations in this proposal) is rather dangerous. I am advised that native Chiefs would take these words as practically tantamount to an order. Would you agree to substituting for word after "expect" words such as (native Chiefs to give very thorough consideration to the proposals in consultation with local administrations)? I agree of course that on question of policy generally, last word cannot rest with the natives but this does seem a rather exceptional case as the whole object is to secure their goodwill towards the Union.

4. As regards financial aspect no one regrets more than I do loss of the Union contribution especially as regards soil erosion scheme; indeed I fear keenness to get money may have warped our judgment here as to the probability of serious opposition. Arguments which you suggest have already been put to the Chiefs and I will instruct the Resident Commissioners to continue to press them. But if the Union contribution breaks down I hope that the Colonial Development Advisory Committee will not desert us. Acute erosion trouble has been recognized for a long time past and I think it was always contemplated, long before General Hertzog's visit to England, that application would be made to the Colonial Development Fund as soon as Pim's report was available.

5. I will issue to Resident Commissioners instructions on the lines indicated in your telegram as soon as I have received your instructions on the point raised in paragraph above and inform them that I shall be discussing the matter further with you when I get home.

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* No. 32.

10991/320. No. 60.

DESPATCH

from

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received 7th May, 1936.)

(Basutoland.)

(No. 279, confidential.)

SIR, High Commissioner's Office, Cape Town, 27th April, 1936.

With reference to my confidential telegram No. 63 of to-day's date* regarding the attitude of the native Chiefs in the High Commission Territories towards the proposed grant by the Union Government of financial assistance for certain development schemes, I have the honour to transmit herewith a copy of a despatch from the Acting Resident Commissioner of Basutoland forwarding a copy of a letter which he has received from the Paramount Chief.

2. I have requested Mr. Sims to inform the Paramount Chief that I have received a copy of his letter and that I shall give careful consideration to his views and communicate further with him on the subject through the Resident Commissioner as soon as possible.

I have, &c.,

H. E. PRIESTMAN.

In the absence and by direction of the High Commissioner.

Enclosure 1 in No. 60.

Resident Commissioner's Office,

YOUR EXCELLENCY, Maseru, Basutoland, 23rd April, 1936.

With reference to Your Excellency's confidential telegram No. 46 of the 7th March on the subject of the communication to the Paramount Chief and the Basuto generally regarding the co-operation of the Union Government and the offer of financial assistance towards the cost of anti-soil erosion measures in the Territory, I have the honour to transmit a copy of a letter which I have received from the Paramount Chief.

2. Your Excellency will observe that the Paramount Chief is strongly opposed to the acceptance of the offer by the Union Government of the grant of financial assistance, and, as he puts it, that in preference, the Basuto should divest themselves of all their possessions rather than accept it. A literal translation of the Sesuto expression which he has used is: "Take all that I have, but spare my life."

3. There can be no question of doubt that the Paramount Chief's underlying fear is that the acceptance of financial aid from the Union Government would be tantamount to the incorporation of Basutoland within the Union, and, knowing that he would have considerable backing from the Chiefs and people in regard to the feeling of aversion on this point, it is only natural that he should offer the alternative suggestion he has made.

4. When Griffith came in to discuss the matter on the 14th instant, he brought up the question of a mineralogical survey of the Territory, but he does not mention this in his letter. Probably he intends to write specially on this matter as he appeared to be quite definite on this proposal as a means of raising further funds.

5. The position on the whole is somewhat difficult and delicate and I can see no means of overcoming the Paramount Chief's fears except by informing him that the Union grant has been made at the instance of the Imperial Government and that it must not be regarded as a pledge in respect of incorporation. It could also be pointed out to him that this matter has now reached a stage at which it would be difficult to withdraw without leading to grave consequences such as possible restrictions on Basuto labour and produce, etc., on which the life of the Territory mainly depends.

6. In the meantime, I would suggest that I should be instructed to inform the Paramount Chief that the matter is having Your Excellency's serious consideration.

I have, &c.,

J. H. SIMS,

Acting Resident Commissioner.

His Excellency
Sir William Clark, K.C.S.I., K.C.M.G.,
High Commissioner for Basutoland, etc.

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* No. 53.

Enclosure 2 in No. 60.

Paramount Chief's Office, Matsieng, 30th March, 1936.

I greet you Chief.

CHIEF,

I have seen my messengers whom I sent to you in accordance with your telegram No. 119 of the 16th March, 1936, and they have told me all that you wished to speak to me through them; and I have also read copy of the memorandum from His Excellency the High Commissioner regarding the proposed grant by the Government of the Union of South Africa to assist Basutoland and the other Protectorates in the work of soil erosion and other things.

Chief, with regard to the money which the Union Government has volunteered to pay to assist Basutoland to combat soil erosion, I ask you to request His Excellency on my behalf that this money which the Union Government has offered to pay to Basutoland may be held back. Chief, I make this request because I understand this Government has offered to pay this amount as a result of the discussion which took place between Mr. Thomas, then Secretary of State for the Dominions, and General Hertzog, Prime Minister of the Union, on the occasion that General Hertzog went there to ask that I be incorporated in the Union. For this reason, Chief, I feel afraid that this money should come and assist in the work of this Territory.

Chief, I ask you to be good enough to make the request on my behalf that although the Basuto are in difficulty owing to shortage of food and want of live stock, and there is great poverty, they should to-day sacrifice their lives and their animals by giving themselves to this work so that this portion of money which ought to be paid by the Union Government may be paid by the Basuto in order that the soil and this Territory may remain theirs; and, Chief, you will see that there have been instances of this nature in the past—the difficulties which confronted this Territory stripped the Basuto of what they possessed and only the soil was left for them which as they ploughed they were able to raise the live stock which they have had, which, however, died through the recent drought and consequent poverty. Chief, there is a saying in Sesuto that "An assegai should not pass by a beast and stab a person"; and it is for this reason, Chief, that I say although the Basuto are in difficulty with regard to food and they have no live stock, they should so strip themselves that only their soil will remain for them.

With greetings, &c.,

N. GRIFFITH LEROTHOLI,

Paramount Chief.

The Acting Resident Commissioner of Basutoland,
Maseru.

10991/319. No. 61.

TELEGRAM

to

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Sent 9 p.m., 7th May, 1936.)

[*Answered by No. 63.*]

No. 58. Confidential. Your telegram 6th May No. 72*. I am glad to hear that you had such a satisfactory discussion with General Hertzog and should be obliged if you could thank him for his assurances and let him know how much I appreciate his understanding attitude. I am also grateful to you for your full explanation of your views. I am inclined to agree with point raised in paragraph 3 of your telegram and am prepared to leave to your judgment precise terms of instructions to Resident Commissioners, though you will no doubt make it clear that they should do their best to persuade Chiefs in the direction of acceptance. If your efforts ultimately unsuccessful, we shall do our best with the Colonial Development Advisory Committee.

Personal.—My best wishes to you and your family for a pleasant and restful voyage.

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* No. 59.

10991/324. No. 62.

DESPATCH

from

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received 15th May, 1936.)

(No. 294, confidential.)

SIR, High Commissioner's Office, Cape Town, 4th May, 1936.

With reference to my despatch confidential No. 287 of the 30th April* I have the honour to transmit herewith a copy of a despatch from the Resident Commissioner of the Bechuanaland Protectorate enclosing a copy of a letter from the Acting Chief of the Bamangwato Tribe protesting against the acceptance of the offer of financial assistance from the Union Government.

2. I also enclose a copy of a telegram from the Assistant Resident Commissioner at Mafeking which was received by Colonel Rey during his recent visit to Cape Town.

I have, &c.,

H. E. PRIESTMAN,

in the absence and by direction of the High Commissioner.

Enclosure 1 in No. 62.

SIR, Resident Commissioner's Officer, Mafeking, 28th April, 1936.

With reference to my telegram No. 98 of yesterday's date and previous correspondence, I have the honour to transmit herewith copy of a letter from the Acting Chief Tshekedi regarding the acceptance of pecuniary assistance from the Union Government for work in the Bechuanaland Protectorate.

I have, &c.,

C. F. REY,

Resident Commissioner.

His Excellency
The High Commissioner,
Cape Town.

MY FRIEND, Serowe, Palapye Road, Bechuanaland Protectorate, 17th April, 1936.

Reference to an official memorandum read at a meeting of the Tribe on the 25th March, 1936, explaining that the Union Government have volunteered to assist financially and in other ways with certain schemes for the improvement of conditions in the native areas of the Territory.

The natural desire of any nation should be to live in peace and goodwill with its neighbours. Our hope is that the relationship between the Union Government and ourselves in the Bechuanaland Protectorate will be a cordial and amicable one, and for our mutual benefit.

We assist the Union by large numbers of our people who go to work in the Gold Mines—the chief industry of the Union—which is always requiring more cheap labour. In consideration of points such as this we never cease to hope that the Union Government will open its markets, and particularly the Johannesburg meat market, to our chief industry—the cattle industry.

But we have consistently and strenuously opposed any suggestion that we should become either a portion or a Protectorate of the Union of South Africa whenever and on every occasion that same has been suggested. We desire to remain under the direct Protection of Great Britain, which we hope and pray may long continue.

The Bamangwato People accordingly view with great alarm and suspicion the suggestion that the Imperial authorities in the Protectorate contemplate accepting pecuniary or other assistance from the Union Government. They are strongly of opinion that the acceptance of such an offer will place the Protectorate natives under a debt and obligation to the Union Government.

We should have moved sooner in this matter had we understood that the conversations between Mr. Thomas, the then Secretary of State for Dominion Affairs, and General Hertzog, the Prime Minister of the Union of South Africa, meant that the suggested "co-operation" was to take this form.

In the light of recent and proposed legislation in the Union, the free and willing consent of the natives of Bechuanaland to become part and parcel of the Union of South Africa, however, appears to be more remote than ever before.

We therefore hereby respectfully register a solemn protest against the present proposal as being detrimental to our very existence as a free people and request His Excellency, the High Commissioner, to convey this, our protest, to the Secretary of State.

With greetings, &c.,

TSHEKEDI KHAMA,

on behalf of the Bamangwato.

The Resident Magistrate,
Serowe.

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* 10991/322: not printed.

Enclosure 2 in No. 62.

TELEGRAM

from

ASSISTANT RESIDENT COMMISSIONER, MAFEKING,

to

RESIDENT COMMISSIONER, C/O ADMINISTRATIVE SECRETARY, CAPE TOWN.

No. 245: 1st May, 1936. In response your Honour's enquiry following is message received from District Commissioner Serowe.

Begins.—Letter which appears to have been drafted by person other than Tshekedi was result of final short meeting at which tribe confirmed terms of letter and entered protest as is predicted in final paragraph my minute 27th March having realized full significance of offer. Regret delay in forwarding letter was due to my absence at Selika and was sent at first opportunity.

10991/329. No. 63.

TELEGRAM

from

ACTING HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received 5.16 p.m., 29th May, 1936.)

No. 82. 29th May. Confidential. Your telegram of the 7th May, confidential No. 58*. Following telegram has been received from the Resident Commissioner, Basutoland:—

Begins.—28th May. No. 69. Reference Sir William Clark's confidential letter of the 8th May, I have received letter from Paramount Chief regarding proposed grant by the Union Government towards anti-erosion work to the following effect. *Begins.*—Chief, I reluctantly agree that this grant may be made if the Secretary of State assures me that this grant will not impair pledge that I will be consulted and be given an opportunity to answer for myself before any decision is reached as to transfer of Basutoland to the Union, and that also the House of Commons will be given an opportunity to express their views.

I am forwarding copy of letter by post but shall be glad to know whether I can give assurance required.—*Ends.*

I have replied as follows:—*Begins.*—No. 72. Confidential. Your telegram of the 28th May, No. 69 Union contribution. Secretary of State's instructions to the High Commissioner contained in (1) on page 4 of Sir William Clark's confidential letter of the 8th May to you gives assurance which the Paramount Chief desires and similar assurance was given by the Secretary of State on the 28th April in the House of Commons *vide* copy of Parliamentary questions and answers forwarded with above letter. In view of the foregoing, assume what Paramount Chief now desires is assurance, which you are authorized to give, that his letter will be transmitted to the Secretary of State.—*Ends.*

In view of the foregoing I have informed the Resident Commissioners, Bechuanaland Protectorate, and Swaziland, confidentially, that I understand from Richards that Paramount Chief, Basutoland, will accept Union contribution in view of assurance contained in (1) of your confidential telegram No. 55 of the 5th May†, regarding communication to Chiefs.

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* No. 61. † No. 58.

10991/330. No. 64.

TELEGRAM

from

ACTING HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received 3.58 p.m., 2nd June, 1936.)

[*Answered by No. 69.*]

No. 83. 2nd June. Confidential. My telegram of the 29th May, No. 82 confidential*. Following telegram has been received from Resident Commissioner, Basutoland:—

Begins.—30th May. No. 70 confidential. In reply to your confidential telegram No. 72 of the 29th May, (1) on page 4 of Sir William Clark's confidential letter of the 8th May already communicated to the Paramount Chief. What he asks for is a formal re-statement at this juncture that acceptance of Union grant will not impair pledge. I assume I am able to give this re-assurance as from the Secretary of State thus confirming Paramount Chief's acquiescence in acceptance of Union grant.—*Ends.*

Propose if you see no objection to reply as follows:—

Begins.—You are authorized to inform Paramount Chief that the Secretary of State has intimated that acceptance by Paramount Chief of Union offer to contribute towards the cost of scheme for development of Territory does not impair pledge already given by His Majesty's Government in the United Kingdom to consult inhabitants of the Territory before any decision is reached as to transfer as well as to give House of Commons an opportunity to express their views and will not be regarded as in any way committing Chief on that question. Paramount Chief may rest assured that he will be consulted and be given an opportunity to answer for himself before any such decision is reached.—*Ends.*

10991/332. No. 65.

TELEGRAM

from

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received 11.51 a.m., 10th June, 1936.)

[*Answered by No. 69.*]

No. 89. 10th June. Confidential. My telegram No. 83 confidential of the 2nd June†. Following telegram has been received from the Resident Commissioner, Bechuanaland Protectorate:—

Begins.—9th June. No. 137. At a representative Kgotla held at Serowe to-day proposals for Union Government's financial assistance were rejected although I had explained the position very fully. General feeling was intensely suspicious and hostile. Despatch follows.—*Ends.*

Resident Commissioner Swaziland reports that the question is to be discussed at meeting of Paramount Chief's Privy Council on 16th June.

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* No. 63. † No. 64.

10991/333. No. 66.

TELEGRAM

from

ACTING HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received 3.42 p.m., 11th June, 1936.)

No. 90. 11th June. Confidential. My telegram No. 89 of the 10th June, confidential*. Following further message received from the Resident Commissioner, Bechuanaland Protectorate:—

Begins.—As a result of further consultations with Tshekedi, now appears possibility that agreement may be reached. I am seeing him again ten days' time and will then telegraph further message.—*Ends.*

10991/337. No. 67.

TELEGRAM

from

ACTING HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received 4.50 p.m., 12th June, 1936.)

[*Answered by No. 74.*]

No. 91. 12th June. Confidential. *Cape Times* of to-day reported that in Committee on the estimates in the House of Assembly last evening Malanite party moved deletion of item providing for Union contribution towards development of the Territories on the grounds that good South African money should not be thrown away on foreign Territory. In reply General Hertzog stated that guarantee to the Union that Protectorates would eventually come under the Union administration was contained in schedule to the Act of Union which laid down that only decision of the Union Parliament and of the British Government was necessary to effect transfer when the Union Government considered that step desirable. In the meantime British Government had assumed certain obligations first being that natives affected would be consulted before change was made. "This does not mean what was recently again said by one British minister that approval of natives must necessarily be obtained but that they must be consulted. This is necessary because Territories were not conquered by Britain but were placed under a Protectorate in terms of an agreement with natives". British Government feel that when eventually Territories are handed over it shall be with greatest measure of concurrence on the part of the natives or at least with the greatest measure of their goodwill. Since 1924, Nationalist Government had been endeavouring to obtain transfer of Territories but in the meantime strong party had grown up in England opposed to transfer and Government of Great Britain like those of all other countries had to keep the ballot boxes in mind. In South Africa on the other hand strong pressure was being put on the Government for incorporation for patriotic reasons and because of undesirability of having in midst Territories administered by another country. In England in 1930 he had again received assurance that all that was necessary was to ensure the goodwill of the natives. In England last year he received definite assurance that the British Government would do everything necessary to ensure transfer would take place but it was necessary that the goodwill of the natives in those Territories should be obtained. Steps would be taken by the British Government but as much as possible should be done on the Union side to improve relations. The big thing was that the British Government would at once give instructions to its officials in the Territories to let the natives know that within a fixed time they would come into the Union. At the same time he gave necessary undertaking that Union would do all in its power to obtain the goodwill of the Territories' populations. Position now is that Britain is holding and looking after the Territories until the time is ripe for transfer. The Union, just as much as England, would decide when the time is ripe. Territories would not be handed over all at the same time. Swaziland would be the first. "It was stated to me that within two years or so we can expect a beginning

* No. 65.

will be made with the first Territory, the second a year or so later and the third a year or so later again so that there will be a gradual transfer of the Territories to the Union. It is with a view to co-operating with the British Government to create feeling among natives that they have nothing to fear from the Union and that the Union intends to promote native interests just as much as the interests of the native tribes in the Union that £35,000 is being made available by the Union." The Prime Minister concluded by paying tribute to the British for co-operating to ease and assist transfer. He promised that the Union would do its share in co-operation to secure goodwill. He added that it was regrettable that natives in the Territories had semi-officially declined to accept offer of £35,000 but that nevertheless it was the duty of the Government to make money available to show that they are prepared to co-operate in increasing the necessary conditions for taking over the Territories. *Cape Times* in leader stresses protection afforded the natives by principles of trusteeship embodied in the schedule to the Act of Union and mentions Minister of Native Affairs had stated that as the Union had technical powers to delete the schedules the agreement of 1910 could if necessary be consolidated by treaty.

In my view effect of the Prime Minister's statement on native opinion in the Territories cannot but be deplorable particularly owing to the suggestion that behind Thomas-Hertzog agreement there is an understanding with His Majesty's Government fixing a time limit within which the Territories will be transferred and order in which transfer will take place. Although reference to a statement by a British minister suggests divergence of views this may be due to inaccurate reporting and it is possible that General Hertzog was citing statement in support of the view that acquiescence of natives to the transfer is not essential. *Die Burger's* report is also ambiguous on this point. I also feel question of a financial contribution by the Union Government has been so linked by General Hertzog with that of transfer of the Territories as to compromise seriously your assurance conveyed to the Chiefs that acceptance of contribution will not commit them to transfer. It is difficult to suggest reasons which may have promoted the Prime Minister's speech. It seems doubtful if he could have assumed that contributions would not be accepted by the Territories because in response to an enquiry a few days ago by Secretary of Native Affairs, prompted by Mr. Grobler, as to whether preparation of a development scheme for Swaziland should be abandoned thereby releasing the services of the Union engineer in July, the former was informed that negotiations with the Chiefs were in delicate position and that it was therefore undesirable at present to take any action which might suggest that we regarded it as settled that the natives had definitely refused the Union contribution. I can only assume that the Prime Minister in his desire to meet local parliamentary criticisms had not in mind unfortunate effects which his statement must inevitably have on native opinion in the Territories.

I shall await your instructions regarding any communication which you may think it desirable for me to make to the Prime Minister. He will presumably leave Capetown within the next few days as Parliamentary session will terminate Monday 15th June.

10991/338. No. 68.

TELEGRAM

from

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received 5.29 p.m., 12th June, 1936.)

No. 92. 12th June. Confidential. My telegram No. 91, confidential*. To-day Mr. Marwick called on Mr. Antrobus at Colonel Stallard's request and left with him advance cop(y)(ies) of Hansard version of Prime Minister's speech. He intimated that the matter had been reported by Colonel Stallard to " our friends in England " with a view to question in the House of Commons. Leading members of Dominion party were not in the House when the matter was raised by Nationalists and Marwick implied that if they had been Prime Minister would have been challenged forthwith.

Further telegram will be sent indicating where Hansard supplements *Cape Times* version but latter is substantially correct.

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* No. 67.

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10991/330. No. 69.

TELEGRAM

to

ACTING HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Sent 10 p.m., 12th June, 1936.)

No. 69. Confidential. Your telegram 2nd June, No. 83*. I concur in terms of proposed reply. I assume you are keeping Union Government informed confidentially and concurrently of what is passing with Paramount Chief and that it will now be possible to proceed with anti-erosion work.

I have noted information in your telegram of 10th June, No. 89†, as to attitude of Bamangwato and will await further news from you as to views of other Tribes in the Bechuanaland Protectorate and of the Swazi Council.

10991/339. No. 70.

TELEGRAM

from

ACTING HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received 4.28 p.m., 13th June, 1936.)

No. 93. 13th June. Confidential. My telegram No. 92 of the 12th of June, confidential‡. Advance copy of Hansard shows that the Prime Minister began by stating that in 1910 the control of the Territories was reserved, not to remain under the administration of England but eventually to come under the administration of the Union. " They were not incorporated at that time into the Union for any other reason than because we had only just started as a young nation and it was necessary for us to take breath a little and for that time they were to be reserved. But at that time a schedule was annexed to our constitution in which it was laid down that when the Union considered that it was advisable for the administration of those Territories to be taken over it would only be necessary to pass a resolution of this House for those Territories to be taken over from the British Government. That schedule is still in force to-day and it is a guarantee to us that those will still come to us. In the meantime the British Government has assumed certain obligations and the first is that natives, who are involved in the scheme (corrupt group), natives in the three Territories, will be consulted before transfer takes place and not, as was recently again said by one of the British ministers that approval of the natives would necessarily have to be obtained but that they should be consulted. That is advisable because they are Territories that were not conquered by England but because they are Territories where British occupation was established under agreement by the natives ". Version then agrees generally with that in *Cape Times* with the following modifications: the term ballot box is not used but speech indicates that in 1926 the British Government did not consider it advisable to do anything before the General Election: for the sentence beginning " The big theme mentioned " substitute " nothing at all was mentioned about money. The great thing was that the British Government would immediately give instructions to British authorities who were entrusted with the administration of the Territories to give natives to understand, gradually make them understand, that after a time they would have to go into the Union to be administered by the Union instead of by England "—for the portion beginning " position now is " and ending " Swaziland would be first " substitute the following " Since last year we have been in the position that England is actually only holding those Territories for us to hand them over to us as soon as that little child is quiet and does no more shouting. MR. ERASMUS: That may take years. THE PRIME MINISTER: I cannot help that but I was plainly told and I welcome it and approve of the Territories not all being handed over to us at the same time. Swaziland would e.g., probably be the first. MR. ERASMUS: Who was to decide when we had obtained their goodwill? THE PRIME MINISTER: The Union just as much as

* No. 64. † No. 65. ‡ No. 68.

England. MR. ERASMUS: One of us surely must judge. THE PRIME MINISTER: Does the Honourable gentleman want to fight about it? MR. ERASMUS: We should be able to judge. THE PRIME MINISTER: We have our judgment and just because we have decided that the time has come, as I shall show in a moment, we have put this amount of £35,000 on the estimates. The position is that we shall be able to take over one after the other according as it may be expected areas are ripe and ready to be safely handed over without the British Government doing anything which may be regarded as contrary to its original undertaking to the natives. The money has been spent in those Territories every year and then the question came up with reference to spending of money for the purpose for which this £35,000 is intended whether it would not be advisable that we on our part should slowly take a part in it and would (corrupt group) our handing on our part whilst the British Government was engaged in fulfilling that function and for time to promote the development of the Territories in co-operation with the British Government and then to show the natives by our actions what our intentions with them was and that we were prepared to help them. We said "certainly". It is no more than fair that we should do so and we are prepared to assist the British Government in that way.

For the sentence beginning "It was stated to me" substitute "Then as I have said, after the assurance the British Government gave last year, they are retaining those Territories to hand them over to us at the proper moment. I was informed in about two years we might expect a start to be made with the first Territory and a year or so after with the second Territory so that there would be a possible transfer of those Territories to the Union gradually".

Copy of above text will be forwarded by air mail 15th June. It is understood to have been corrected but may of course be further corrected before publication in Hansard.

10991/342. No. 71.

TELEGRAM

from

ACTING HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received 4.21 p.m., 13th June, 1936.)

No. 94. 13th June. Confidential. My telegram No. 91 of the 12th June*, Resident Commissioner Basutoland after telegraphing summary of statement by General Hertzog as it appeared in the Bloemfontein *Friend* proceeds as follows:—

Begins.—Shall be glad of your directions as to what statement should be issued here to allay unrest and agitation which will be caused by publication of statement so much at variance with the assurances which have been given by the British Government and my own instructions from you. Attitude of Paramount Chief to acceptance of assistance from the Union will undoubtedly undergo complete change as a result of the Prime Minister's alleged statement which clearly indicates how the grant is regarded by the Union Government. Statement is calculated to prejudice the Paramount Chief in the eyes of his people, and His Majesty's Government in the eyes of both.—*Ends.*

It seems clear that explanatory statement should be issued in the three Territories but as such statement would presumably have to rest on the terms of the Thomas-Hertzog agreement as published in the White Paper and as the Prime Minister's speech has gone beyond this agreement I shall await instructions asked for in my telegram of the 12th June, No. 91*. In the meantime propose to defer action on your telegram of the 12th June, No. 69†, and make no communication to the Paramount Chief of Basutoland for the time being. Union Government are being kept informed confidentially of the position *vide* my confidential telegram of the 12th June, No. 91*.

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* No. 67. † No. 69.

10991/340. No. 72.

TELEGRAM

from

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received 4.21 p.m., 13th June, 1936.)

No. 95. 13th June. Confidential. My telegram No. 93 of to-day*. Letter has been received from the Secretary for Native Affairs intimating that with reference to the report in the *Cape Times* of the 12th June of Hertzog's speech contained in my telegram No. 91 of the 12th June†, the Prime Minister has requested him to say that the former's reference to statement by British Minister does not convey the meaning intended and should read as follows "this does not mean that the approval of the natives must necessarily be obtained but that they must be consulted as is confirmed by what was recently said by one of the British Ministers."

10991/343. No. 73.

TELEGRAM

from

ACTING HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received 4.21 p.m., 13th June, 1936.)

No. 96. 13th June. Confidential. Following for Harding:—

Begins.—Corrected version contained in my telegram No. 95‡, confidential, was received after conversation by Priestman with the Secretary for Native Affairs who thereafter consulted the Prime Minister. Smit stated that the opposition in the House of Assembly to the Union contribution was entirely unexpected as the item had already been explained by Havenga, see my telegram No. 30 of the 13th March§. In consequence with the consent of the Prime Minister and his Minister he was not in the House as they had proposed to rely on Thomas-Hertzog agreement if any point should arise. Smit had never heard of any reference to agreed time limit for handing over Territories before the mention in the Prime Minister's statement and cannot understand reference to this or the stress laid on the question of transfer, as the importance of avoiding linking of latter with principle of Union contribution was fully understood by Ministers.—*Ends.*

10991/337. No. 74.

TELEGRAM

to

ACTING HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Sent 8.45 p.m., 15th June, 1936.)

[*Answered by No. 76.*]

No. 71. Confidential. Your telegram 12th June, No. 91†. I agree that General Hertzog's statement is very embarrassing and I think you should seek interview with him and explain to him that we fear that there has been a serious misunderstanding on his part both as to his discussions with Mr. Thomas as summarized in the *aide-mémoire* and in relation to the course of recent negotiations between High Commissioner and Union Government. You might point out that while we agree that it was intended, if conditions became favourable for such action, that the officials in the Territories should endeavour to point out to the natives the advantages to be derived from transfer, it was clearly understood (see note enclosed in Clark's letter to Harding of 29th November‖, the

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* No. 70. † No. 67. ‡ No. 72. § No. 48. ‖ No. 35.

gist of which you might repeat) that proposed Union contribution should be regarded merely as an assistance towards creating goodwill among the natives and that it would be impossible to proceed with present proposals as to co-operation if financial assistance by Union Government were based upon the assumption that we are prepared to instruct officials in Territories to let natives know that Territories would come into Union within a fixed time. I know of no justification for this latter suggestion even in its amended form, nor of any ground for statement that General Hertzog had been informed that he could expect Swaziland to be handed over within two years or so and the others one or two years later. Please explain to General Hertzog as tactfully as possible that I must make our position clear on these points, but that of course I shall be grateful for any observations which he may wish to offer. Question has already been put down in House of Commons for answer on 23rd June, whether in view of official pronouncement by General Hertzog as to future changes in administration of Swaziland there exists any understanding with Union as to the transfer of the Territories to the Union and questions for earlier answer may well be put down. I would propose to reply explaining that the outcome of General Hertzog's conversations with my predecessor was fully stated in the *aide-mémoire* which was accepted by General Hertzog. The *aide-mémoire* laid it down that the policy of both Governments for the next few years was to be directed to bringing about a situation in which, if transfer were to become a matter of practical politics, it could be effected with the full acquiescence of the populations concerned. (You will observe that the words " for the next few years " are important.)

In view of the urgency which arises from Parliamentary questions here, I hope you will be able to see General Hertzog before he leaves to-morrow night and obtain his comments.

As regards unrest which will have been caused in Territories by General Hertzog's statement, no doubt this will be brought tactfully to his notice, and the moral of it gently drawn. I will bear unrest in mind in preparation of answer to be given in the House of Commons, which could subsequently be communicated to Chiefs. I regard it as most important that natives should have no room for doubting our good faith.

In view of General Hertzog's departure from Cape Town and delays which would be involved, I see difficulty in offering to agree with him the statement which I must make shortly in the House but I hope it may be possible to arrive at an agreed statement which could be issued later. He will I know appreciate our Parliamentary difficulties on the subject.

As regards your telegram No. 94*, I agree that action *vis-à-vis* of the Chiefs with regard to co-operation should be suspended until the position is clearer.

10991/337. No. 75.

TELEGRAM

to

ACTING HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Sent 9 p.m., 15th June, 1936.)

Personal and Confidential. You should know that my immediately preceding telegram† was prepared in consultation with Clark.

10991/345. No. 76.

TELEGRAM

from

ACTING HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received 8.27 p.m., 16th June, 1936.)

No. 100. 16th June. Confidential. Your telegram of 15th June No. 71 confidential‡. As instructed I saw General Hertzog to-day and told him that we were greatly concerned over some of the statements which he had made in the House of Assembly on the

* No. 71. † No. 74. ‡ No. 74.

11th June. He started by saying that he was not aware of having stated anything in his speech which was not in accordance with the agreement entered into between himself and Mr. Thomas subsequently embodied in the *aide-mémoire*. I then conveyed to him the gist of the contents of your above telegram and of the record of the interview which I and Priestman had with Grobler of the 21st November, 1935.

Hertzog explained that, as regards the time limit for the transfer of the Territories, information was not derived from any English Minister but he was merely relying on the agreement with Mr. Thomas in 1935. He then consented to dictate the following statement which I read over to him and which he agreed is correct:—

> " There was definitely no time limit fixed for handing over the Territories; there was a definite presumption that within a few years a beginning would be made. No definite number of years was suggested by Thomas. Thomas said that Swaziland would probably be the first then within a few years Bechuanaland. Nothing was said about Basutoland except that Thomas said that that would be the last Territory to follow ".

I enquired if he relied upon any statements by Mr. Thomas at variance with the terms of the *aide-mémoire*. He replied: " No, I intended in my speech in the House to convey the spirit of the arrangement contained in the *aide-mémoire* ".

He agreed that it was no condition of co-operation that the British Government should be prepared to instruct officials in the Territories to let the natives know that the Territories would be transferred within fixed period of time but intimated that reference to that matter arose from his request to Mr. Thomas that officials of the Territories should be instructed to educate the native mind towards transfer rather than as they had been doing in the past to resist transfer. He stated that the Union contribution was not intended to link up with question of transfer.

I asked if he agreed with the methods to be employed in co-operation as expressed in the interview that I and Priestman had with Grobler on the 21st November, 1935, and I stated the substance of the record of that interview. He replied " That is exactly what we had agreed to do " as to his statement that consulting natives was not the same thing as obtaining their approval his explanation was as follows:—" according to what has been stated over and over again on behalf of the British Government it must be pointed out that the British Government has never in the matter of the transfer of the administration of these Territories undertaking towards the natives that their consent to the transfer in the light the *aide-mémoire* is necessarily required but that they would be duly consulted ". When I asked the Prime Minister what weight he attached to the expression " the full acquiescence of the populations concerned " he said that meant they must come in with a maximum of good-will.

In regard to the Prime Minister's statement in the House that the natives for whose benefit money was voted semi-officially gave notice that they did not want money he said that was his own conclusion as to the present situation and added: " I was told by Clark that the offer had not in fact been declined by the natives ". The Prime Minister supplemented this by saying that he was aware from his conversation with Clark that the Paramount Chief of Basutoland would probably agree to accept contribution and that there were hopes that the other Territories might follow suit. The Prime Minister quite frankly admitted that he had not realized that he had expressed himself in the form in which his observations appeared in the Press. He had not yet seen a copy of Hansard. He added that talks in Afrikaans and a good deal of what he said would not convey when translated and formally reduced to paper the views which he had meant to convey. He said that I was at liberty to convey to the Secretary of State all that he had said to me; that he would do the best he could to get us out of our difficulty and hoped that we would try to avoid getting him into trouble with the people of his country. The Prime Minister concluded by saying: " I am very sorry that embarrassment should have been caused by my observations " he also said that he quite realized now that a very unfortunate impression might be created in the native mind in the Territories by the publication of his remarks. As regards the issue of an agreed statement he did not specifically consent when I put this to him though he expressed his willingness to assist in any way he could.

Hertzog is now expected to leave Cape Town tomorrow evening 17th June.

10991/346. No. 77.

TELEGRAM

from

ACTING HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received 8.27 p.m., 16th June, 1936.)

No. 101. 16th June. Confidential. Following for Harding.

Begins.—My immediately preceding telegram*. I understand from Hertzog that his reference to two years' limit was based on the words " Next few years " in the *aide-mémoire* which he took to mean about three years of which one year has already gone. He repeated more than once that he had not intended to convey the meaning contained in the offending passage of his speech. At one stage he stated that he relied on the terms of the Act of Union and the Schedule thereto but on my pointing out to him that the constitutional position changed since 1910 and suggesting that both Governments are now bound by the express agreement contained in the *aide-mémoire* and the agreed procedure regarding co-operation he replied that he agreed and abided by the terms of the *aide-mémoire*. I felt it undesirable to press him to elucidate what he meant by saying that he would do the best he could to get us out of difficulty as I am in some doubt whether a statement by him would be satisfactory unless on the agreed lines.

He appeared to be reluctant to consent to joining in an agreed statement but his later expression of willingness to help may imply this.

I learnt from Richards that the Paramount Chief of Basutoland has written to say that Hertzog's statement confirms the fear that the acceptance of financial assistance would be regarded by the Union as giving definite claim to transfer.

Rey points out that the good faith of the Administration gravely prejudiced and presses for statement in time for communication at Kanyo on the 18th June and to Tshekedi on the 23rd June. Unless I hear from you in time to the contrary I propose to inform Rey that meetings had better be postponed pending the receipt of the Secretary of State's instructions although Rey states that to cancel meetings or to give evasive answers would aggravate already existing deep suspicion.—*Ends.*

10991/348. No. 78.

TELEGRAM

from

ACTING HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received 12.40 p.m., 17th June, 1936.)

[*Answered by No. 84.*]

No. 103. 17th June. Confidential. My telegram of 16th June No. 100 confidential†. *Cape Times* reports in the House of Assembly last night on the second reading of the Appropriation Bill Colonel Stallard referring to the Prime Minister's recent statement said assertion that handing over of these Territories to the Union one after the other was a matter of certainty in the near future appeared to be in conflict with the views of the British Government as expressed in *aide-mémoire* and in Memorandum handed to Smuts in 1933. He invited the Prime Minister to make clear and definite statement on the position as any misunderstanding would cause trouble and postpone the day when the Territories would come into the Union. Prime Minister in reply stated that he differed entirely from Colonel Stallard in the interpretation of the British *aide-mémoire*. That *aide-mémoire* was fully correct. He had left England under firm impression that no more than two or three years would elapse before Swaziland would be in a position to agree with incorporation in the Union. *Aide-mémoire* spoke of few years. In 1910, it had been contemplated that the Protectorates would be handed over in ten years. After waiting twenty-six years his opinion was that another two or three years were sufficient to reconcile the natives of the Protectorates to the idea of being transferred to the Union and of assuring them of the good will of the Union. Up to last

* No. 76. † No. 76.

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year, representatives and officials of the British Government in the Protectorates had rightly given the natives to understand that the British authority there would remain. Last year the British Government for the first time since 1910 agreed to take immediate steps to prepare the natives for the handing over of the Protectorates. Union agreed to make the natives feel that they would be welcomed and treated properly in the Union. Object of the *aide-mémoire* was merely that natives should be brought into the frame of mind where they would be reconciled and satisfied with the transfer of the Protectorates within a few years. He hoped that Colonel Stallard would not forget that, if the natives took up attitude inimical towards the Union, serious state of affairs might ensue. Question of closing the Union markets against native produce had been broached frequently in the House and outside and longer transfer of the Protectorates was delayed the more the Protectorates were likely to suffer. Summary in another portion of the *Cape Times* states that General Hertzog also indicated that Bechuanaland would probably be taken over after Swaziland, and Basutoland would follow. I think it certain that General Hertzog's latest remarks will tend to increase suspicion in the native mind created by his statement last week and his threat as regards closing the Union market against the Protectorates will if anything further hinder the policy of attempting to win the goodwill of the natives.

10991/350. No. 79.

TELEGRAM

from

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received 5.35 p.m., 17th June, 1936.)

No. 104. 17th June. Reference my telegram No. 103*. I gather from discussions with General Hertzog and from his two statements in the House that he interpreted the *aide-mémoire*, in the light of his talks with Mr. Thomas, to be as follows: (1) The British Government is administering the Territories as trustee for the Union. It was never a term of the arrangement between the two Governments that the consent of the natives to transfer must be secured; (2) the transfer of the administration of the Territories to the Union would be effected in the next few years. This means from the date of the *aide-mémoire* within about three years as regards Swaziland another year or so for Bechuanaland and a further couple of years or so for Basutoland; during the waiting period of three years or so every effort would be made by both Governments to secure maximum goodwill of the natives towards the Union; one such effort on the part of the Union is the offer of a gift to the Territories of a substantial sum of money to be expended on improvements for the benefit of the natives; the officials in the Territories would be instructed by the British Government to make every effort to convince the population that the Union desire their goodwill, to draw attention of the natives to the benefits conferred upon them by the Union Government and to educate them generally to contemplate the idea of transfer without misgivings; if, after these efforts have been made, natives refuse to acquiesce in transfer Union Government will be justified in enforcing compliance by using economic pressure.

10991/349. No. 80.

TELEGRAM

from

ACTING HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received 3.35 p.m., 17th June, 1936.)

No. 105. 17th June. Confidential. My telegram of the 17th June No. 103†. Resident Commissioner Bechuanaland Protectorate reports that of eight Bechuanaland tribes all have voted against acceptance of Union financial assistance except Barolong and Bakgatla. These two may change views after hearing Prime Minister's speech. Reason for refusal is deep suspicion of Union Government's motive(s) and profound hostility to incorporation amongst the people as well as Chiefs. He has found these feelings general on his tours.

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* No. 78. † No. 78.

P.Q.10991/24. No. 81.

TELEGRAM

to

ACTING HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Sent 8 p.m., 17th June, 1936.)

No. 72. Various questions were asked to-day in House of Commons as a result of General Hertzog's recent statement concerning the Territories. Parliamentary Under Secretary of State gave following reply:—

Conversations took place last year between my Right Honourable friend's predecessor and General Hertzog regarding the High Commission Territories in South Africa and as a result of these conversations an *aide-mémoire* which was accepted by General Hertzog was published in Command Paper 4948. In this document it is stated that the policy of both the United Kingdom and the Union Governments for the next few years should be directed to bringing about a situation in which, if transfer were to become a matter of practical politics, it could be effected with the full acquiescence of the populations concerned. This still represents the policy of the Government here, and I have nothing to add to that statement. At my Right Honourable friend's request the Acting High Commissioner for the Territories is in communication with General Hertzog in regard to his statement.

10991/351. No. 82.

TELEGRAM

from

ACTING HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received 12.37 p.m., 20th June, 1936.)

No. 107. 20th June. Confidential. Following for Harding.

Begins.—In forwarding letter from the Paramount Chief of Basutoland mentioned in my telegram of the 16th June No. 101* to you supporting the Chief's request for its transmission to the Secretary of State, Richards strongly recommends that the whole question of acceptance of the Union contributions should be reviewed on the ground that, in consequence of the announcement that they are regarded in the Union merely as prelude to the incorporation of the Territories, they are bound to fail in favourably influencing native opinion and so defeat the object of the contribution. Rey states that all the Chiefs will require reassurances and that, if faith in the Imperial Government is to be maintained, it is desirable to volunteer statement as soon as possible. Marwick reports that, at meeting with the Paramount Chief and Privy Council Swaziland, Paramount Chief who had read reports of Hertzog's speech pointed out that the British Government had stated that offer of financial contribution was unconditional and did not impair freedom of the Chiefs to express afterwards wishes regarding transfer whereas Hertzog regarded expenditure in the Territories as merely improving property eventually to go to the Union. Paramount Chief therefore recommended that further consideration should be deferred pending receipt of official reply of the British Government to Hertzog's statement to which Marwick agreed. Councillors were very perturbed at statement that it had been agreed that transfer was to take place and that Swaziland was the first to be transferred. I have expressed the view in my despatch No. 390† confidential of the 15th June and have conveyed to Resident Commissioner Secretary of State's interim statement transmitted in his telegram No. 72 of the 17th June‡. I assume that further statement by the Secretary of State should now be awaited.—*Ends.*

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* No. 77. † No. 83. ‡ No. 81.

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10991/353. No. 83.

DESPATCH

from

ACTING HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received 26th June, 1936.)

(No. 390, confidential.)

High Commissioner's Office, Cape Town,
15th June, 1936.

SIR,

I have the honour to refer to my confidential telegrams No. 91 of the 12th June* and Nos. 92† and 96‡ of the 13th June on the subject of the statement of the Prime Minister of the Union in the House of Assembly on the 11th June on the vote for a contribution of £35,000 towards schemes of development in the Territories.

2. I now enclose an advance copy of Hansard containing the Prime Minister's speech, together with a cutting and copy of a translation showing the form in which the statement was reported in the *Cape Times* and *Die Burger* respectively§. Cuttings containing editorial comments from the *Cape Times*, *Argus*, *Bloemfontein Friend*, *Pretoria News* and *Star* are also enclosed§.

3. It will be observed that the newspaper reports are in substantial agreement with the Hansard version and although it is now certain that the latter will be subjected to further correction, at any rate to accord with the revised version of the reference to a statement by a British Minister transmitted in my telegram No. 93 of the 13th June‖, it seems impracticable for the whole statement in Hansard to be amended so extensively as to make it possible to issue a *dément* suggesting that the speech has been inaccurately reported owing to the fact that it was delivered in Afrikaans. Indeed, the Press and Reuters would be unlikely to allow an excuse of this nature to pass unchallenged, and in any case the harm has already been done as regards the Territories by the circulation there of the newspaper reports.

4. Before examining the Prime Minister's statement I think it desirable to point out that it was made during an after-dinner session after the House had been sitting all day; that it is understood that no opposition to the item was anticipated; and that the Prime Minister and Minister of Native Affairs had no brief other than copies of the agreed statement made previously by Mr. Havenga and of the Thomas-Hertzog Agreement. But whatever allowance may be made for an impulsive utterance made in a moment of irritation by a tired man it is impossible to regard the statements of the Prime Minister as other than the considered views of his Government.

5. It is also necessary to bear in mind that the offer of financial assistance by the Union Government had been made unconditionally as regards any question of transfer of the Territories, and that on various occasions in the course of discussions with members of the Union Government Sir William Clark and his representatives had emphasized the fact that such financial assistance could only be regarded as one of the measures towards securing the goodwill of the natives and could not be regarded as committing the latter in any way to transfer.

6. Turning now to the Prime Minister's statement:—It seems idle to suggest that the sole condition precedent to the transfer of the Territories is the passing of a resolution by the House of Assembly. The position is clearly set out in the appendix to Cmd. 4948 which shows that the position is not entirely governed by section 151 of the South Africa Act of 1909, if pledges culminating in the Thomas-Hertzog Agreement of 1935 are not to be entirely discarded.

7. I am unable to trace a statement by a British Minister to the effect that consultation of the natives does not imply that their approval to transfer must necessarily be obtained. This point was suggested by Mr. Lionel Curtis in one of his articles contributed to the *Times* after his visit to South Africa in 1935, but paragraph 4 of the *aide-mémoire*, Cmd. 4948, clearly indicates that the policy of both Governments for the next few years should be directed to bringing about a situation in which if transfer were to become a matter of practical politics, it could be effected with the full acquiescence of the populations concerned. It is at any rate premature and dangerous

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* No. 67. † No. 68. ‡ No. 73. § Not printed here. ‖ No. 70.

now to consider what measure of acquiescence would suffice if the ideal of full acquiescence cannot during the next few years be achieved. On the other hand, it seems the height of folly to put forward now, as the Prime Minister has done, the suggestion that consultation does not imply acquiescence.

8. Basutoland is of course a Colony, and the Prime Minister's definition of the status of that Territory is not accurate.

9. The phrase that " the British Government would use every effort to see that the transfer took place " goes beyond the agreement for the establishment of the closest possible co-operation between the Union Government and the Administrations of the Territories: so also does the reference to the British authorities of the Territories being instructed to give the natives to understand gradually that after a time they would have to go into the Union.

10. So far as I am aware, no undertaking exists that the Territories will be handed over at intervals or that Swaziland will probably be the first to be transferred. Furthermore I have no knowledge of the information stated to have been given to the Prime Minister that it is expected that a start might be made with the first Territory in about two years' time, and as stated in my telegram No. 96 of the 13th June*, I am confidentially informed that no record of any such time limit is contained in the papers of the Ministry of Native Affairs.

11. What to my mind however is the most serious feature is, as pointed out in my confidential telegram No. 91 of the 12th June†, the underlying suggestion that behind the Thomas-Hertzog Agreement as published in the White Paper, additional understandings or undertakings exist which go much further than the published agreement. I can conceive nothing more calculated than this to destroy the confidence of the natives of the Territories in the good faith of their Administration and of His Majesty's Government.

12. As regards the mention of the semi-official notice given by the natives to the Union that they did not want the money, this can only I presume refer to Sir William Clark's interview with the Prime Minister on the 6th May reported in his confidential telegram No. 72‡ of that date when General Hertzog was informed that further efforts would be made to allay the suspicions of the natives and to impress them with the importance of the benefits offered with a view to influencing them towards acceptance. No communication to the Native Affairs Department since that date has been of a nature to suggest anything other than that the position was still open, and that, subsequent to the provisional decision of the Paramount Chief of Basutoland to accept the offer, conveyed to you in my confidential telegram No. 83 of the 2nd June§, the situation was most hopeful as regards acceptance, seeing that a favourable decision by Basutoland could not but influence the natives of the other two Territories favourably towards acceptance of the Union contribution.

13. Subject to such instructions as I may receive from you regarding any communication to be made to the Prime Minister concerning his divergence from the terms of the Thomas-Hertzog Agreement I am of opinion that the best course to pursue would be to intimate to the Union Government that it is now desirable to abandon quietly their proposals for financial contributions to the Territories in view of the unfavourable impression created on the native mind by the Prime Minister's statement.

14. As regards the question of issuing an explanatory statement in the Territories the position is one of the greatest difficulty and delicacy. Some explanation must obviously be given at the earliest possible moment, but until I have been acquainted with the attitude which you propose to adopt in regard to the Prime Minister's statement in the House of Assembly I am unable to suggest a formula which could reconcile that statement with the assurances already given to the Chiefs.

15. I also think that the Resident Commissioners might be authorized, in the altered conditions now existing, to discontinue their efforts to influence the natives towards acceptance of the offer.

I have, &c.,

CECIL FFORDE,

High Commissioner.

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* No. 73. † No. 67. ‡ No. 69. § No. 64.

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Enclosure 1 in No. 83.

THE PRIME MINISTER: It is possibly necessary for me just to remind the hon. member, who has just sat down, a little of the past. Let us go back and see what the position in connexion with this matter actually was. In 1910, when we were given the Constitution, the control, the administration of the three native territories, Basutoland, Swaziland, and British Bechuanaland, were reserved, and not given to the Union, but they were reserved not to remain under the administration of England, but eventually to come under the administration of the Union. They were not incorporated at that time into the Union for any other reason than because we had only just started as a young nation, and it was necessary for us to take breath a little, and for that time they were to be reserved. But at that time a schedule was annexed to our Constitution in which it was laid down that when the Union considered that it was advisable for the administration of those territories to be taken over, it would only be necessary to pass a resolution of this House for those territories to be taken over from the British Government. That schedule is still in force to-day, and it is a guarantee to us that those territories will still come to us. In the meantime the British Government has assumed certain obligations, and the first is that the natives, who are involved in the schedule, viz., the natives in the three territories, will be consulted before the transfer takes place, and not, as was recently again said by one of the British Ministers, that the approval of the natives would necessarily have to be obtained, but that they should be consulted. That is advisable, because they are territories that were not conquered by England, but because they are territories where the British occupation was established under agreements by the natives.

DR. N. J. VAN DER MERWE: What about Basutoland?

THE PRIME MINISTER: There it is also the case. The Basutos were not conquered. The protection of England was called in, and England assumed the protection under certain conditions.

DR. N. J. VAN DER MERWE: Basutoland is not a protectorate, like Bechuanaland.

THE PRIME MINISTER: No, it stands in a free relation towards England as overlord. But in the protectorates also the British Government assumed certain obligations. They were not conquered territories either. That being so, the British Government felt that, when eventually the territories were handed over to the Union, it would be advisable for it to be done with the largest amount of consent on the part of the natives, or, at any rate, with the largest amount of their good disposition. When the Nationalist Government came into office in 1924, then one of the first things that was brought home to us was the necessity of getting the Government of England to hand over those three territories. I immediately started, in 1924, a correspondence with the British Government about the matter, and in 1926 it was also discussed by me. In the meantime a party arose in England, as has happened in all countries, a strong party arose which opposed itself to the transfer of those territories to the Union. The British Government, as will be understood, felt itself hindered in going on with the handing over of those territories. In England, as here, the Government has to accommodate itself after a general election. In 1926 there was a general election in England approaching, and it was not considered advisable to do anything before the election, but the promise was given that the British Government would favourably consider the matter, but it had to take count of the feelings of the people. When the time was ripe they would hand them over to us. In the meantime, I may say, that the pressure in South Africa became very great, and quite rightly. Hon. members can understand that it is very inadvisable to have territories in our midst, native territories surrounded by the Union, land which is not under the control of the Union, but of another power—England. Even if it were for nothing else than patriotic purposes it was strongly urged that the transfer should be obtained as quickly as possible. There were also other reasons, but I do not want to go into them. When I was in England in 1930 the question was again raised, and I again received the assurance that all that was necessary was to see that the goodwill of the natives was obtained. When I was in England last year I again urged that the matter should be completed, and I then got the definite assurance that the British Government would use every effort to see that the transfer took place, but that it was necessary to obtain the goodwill of the natives inhabiting those territories. Then steps would be taken by the British Government, but steps would also have to be taken by us as far as possible to improve the relations.

MR. ERASMUS: Was it a condition that was imposed on us that we should vote this money?

THE PRIME MINISTER: Nothing at all was mentioned about money. The great thing was that the British Government would immediately give instructions to the British authorities, who were entrusted with the administration of the territories, to give the natives to understand, gradually to make them understand, that after a time they would have to go into the Union, to be administered by the Union instead of by England, and, of course, it was at the same time also understood, and I, on my part, on behalf of the Union undertook to do everything in our power to obtain the goodwill of the population in those territories. Since last year we have been in the position that England is actually only holding those territories for us, to hand them over to us as soon as that little child is quiet, and does no more shouting.

MR. ERASMUS: That may take years.

THE PRIME MINISTER: I cannot help that, but I was plainly told, and I welcomed it, and approved of the territories not all being handed over to us at the same time. Swaziland would, e.g., probably be the first.

MR. ERASMUS: Who was to decide when we had obtained their goodwill?

THE PRIME MINISTER: The Union, just as much as England.

MR. ERASMUS: One of us surely must judge.

THE PRIME MINISTER: Does the hon. gentleman want to fight about it?

MR. ERASMUS: We should be able to judge.

THE PRIME MINISTER: We have our judgment, and just because we have decided that the time has come, as I shall show in a moment, we have put this amount of £35,000 on the Estimates. The position is that we shall be able to take over one after the other according as it may be expected that the areas are ripe and ready to be safely handed over, without the British Government doing anything which may be regarded as contrary to its original undertaking to the natives. Money has been spent in those territories every year, and then the question came up with reference to the spending of money for the purposes for which this £35,000 is intended, whether it would not be advisable that we, on our part, should slowly take a part in it, and would hold out our hand on our part, while the British Government was engaged in fulfilling that function, and for the time to promote the development of the territories in co-operation with the British Government, and then to show the natives, by our action, what our intention with them was, and that we were prepared to help them. We said, "certainly". It is no more than fair that we should do so, and we are prepared to assist the British Government in that way. It was agreed to between us that we were ready to assume liability for half the cost of the irrigation works, and other works. What my hon. friends opposite probably do not understand is this. If we are to take over those territories, and I do not believe there is any one of us who will doubt the necessity of the territories being taken over by us, whenever it may be done, if we are to take over those territories, then we cannot want the British Government to spend money there. Then we must spend it there, and even if the British Government were to continue spending money there, as it is now doing, then we must take over those territories with the financial burdens that rest upon them. What we are doing here is nothing more than what we shall ultimately have to do when those territories are handed over to us. Then, as I have said, after the assurance that the British Government gave last year, they are retaining those territories to hand them over to us at the proper moment. I was informed that in about two years we might expect a start to be made with the first territory, and a year or so after with the second territory, so that there would be a possible transfer of those territories to the Union gradually. It is with a view to co-operation with the British Government to cause that necessary feeling, that there is no need for them to be afraid, to arise amongst the natives and because we intend to promote their interests, just as we are prepared to promote the interests of our native tribes in the Union, that we are providing this £35,000. I think that it was a special mark of honesty, and goodwill on the part of the British Government to come to us and tell us, "Let us co-operate so that we can facilitate the transfer of the administration of those territories to the Union." Because by mutual co-operation we would actually be engaged in co-operating with the British Government, and we should be able to expect to contribute our share to see that the natives would become well-disposed in those territories as soon as possible, and to as great an extent as possible towards the Union when that transfer occurs. That is the whole matter in connexion with it. May I say this, and I think that I ought to mention it to the House, because we have people unfortunately in South Africa of the Exeter Hall type who have never yet been well acquainted with these matters, who make speeches, and unfortunately the debates in this House have certainly not been very helpful to hasten the day when the transfer of the territories can be made, that the natives in those territories are already making themselves heard.

MR. ERASMUS: Bill No. 2 ought to encourage them.

THE PRIME MINISTER: Just let us leave Bill No. 2 alone for a bit. The hon. member for Moorreesburg (Mr. Erasmus) will have months to go about the country with Bill No. 2.

MR. ERASMUS: And I shall.

THE PRIME MINISTER: I have not the least doubt that the hon. member for Moorreesburg would like to do so. He may as well. No one will weep about it. That, however, is not the question to-night, the question is whether we want to take over the native territories, and whether we are willing to take steps to that end. What I wanted to say, when I was interrupted, was that the natives, for whose benefit the money was voted, semi-officially gave notice to us that they did not want the money. Notwithstanding that, it is our duty to vote the money in order to show that we are prepared to contribute to bring into being the necessary conditions for the taking over of those territories. That is the whole position in connexion with this matter, and I do not see how the least objection can be made against this amount.

10991/350. No. 84.

TELEGRAM

to

ACTING HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Sent 10.30 p.m., 29th June, 1936.)

[*Answered by No. 86.*]

No. 79. Confidential. I am grateful to you for prompt action taken on my telegram of 15th June*. In view of General Hertzog's comments at your interview with him and the further statement reported in your telegram of 17th June No. 103† I should be glad if you would communicate to him following message from me.

Begins.—Sir Cecil Fforde has reported to me what passed at his discussion with you regarding your statement in the House of Assembly on the 11th June

* No. 74. † No. 78.

concerning the High Commission Territories, and I have also received from him a report of your further statement in the House on the 16th June. I am glad to know that you agree that the *aide-mémoire* of the 15th May of last year is a full and correct statement of the agreement reached between you and my predecessor. I am however very concerned to find that you seem to have formed a definite impression from the discussions which then took place that there was likely to be no difficulty about the incorporation of Swaziland in the Union within two or three years and of the other two Territories not long afterwards, and even that our officers in the Territories were to be instructed at once to set about preparing the natives for transfer.

As you know, it was pointed out in the *aide-mémoire* that native opinion in the Territories was very strongly opposed to transfer: that our understanding was the Union Government would not wish to incorporate the Territories in the Union unless the inhabitants were prepared and desired to come in: and that, in these circumstances, the policy of both Governments for the next few years should be directed to bringing about a situation in which, if transfer were to become a matter of practical politics, it could be effected with the full acquiescence of the populations concerned. It was with this end in view that it was agreed that it was important to establish the closest possible co-operation between the Union Government and the Administrations of the Territories so that the native population should feel that the Union Government were working in concert with the Administrations with a real and generous desire to develop and improve conditions in the Territories. It has always seemed to us here essential to the success of this policy of co-operation that it should not be hurried and I thought that you held the same view.

I welcomed the generous offer which the Union Government subsequently made to share in the cost of certain development schemes in the Territories because I felt that it had been made in accordance with the spirit of the Agreement: at the same time, it was I think made clear to you by Sir William Clark that such a contribution could only be regarded as a factor which it was hoped would assist to secure that goodwill of the natives. On hearing that the first reactions of the Native Authorities in the Territories towards the proposal had been unfavourable I felt it my duty, acting likewise in the spirit of the Agreement, to instruct the Administrations to do what they could to persuade the natives, in their own interests, to co-operate. I was obliged however at the same time, in view of the questions which had been raised by the Native Authorities, to ask that it should be made clear that acceptance of the offer could not impair the pledges already given by His Majesty's Government in the United Kingdom to consult the inhabitants of the Territories before any decision is reached as to transfer: nor would it be regarded as in any way committing the Chiefs on the point.

In these circumstances the suggestion which has been made that there is some sort of implicit agreement that within two or three years a beginning will be made with the incorporation of the Territories in the Union has seriously disturbed native opinion in the Territories and is liable gravely to prejudice the good faith of the Administrations in the eyes of the natives. Further it is inconsistent with the explanations given by my predecessor and myself in the House of Commons, where this question is watched with close interest by members in all parties. I also cannot but feel that it would be altogether premature, before the policy of co-operation has yet had a fair trial, to speculate as to the period within which such a policy might succeed in bringing about the situation which the two Governments had in mind when the *aide-mémoire* was issued.

I am very much afraid in view of the manner in which the offer of Union financial assistance has now become linked with the suggestion of an early transfer of the Territories to the Union, that it will be difficult at present to expect the co-operation of the natives which I had hoped to secure. To press the offer against their wishes would, in present circumstances, only have the effect of hardening their attitude. In the circumstances I feel that the proposal for Union financial assistance will have to remain in abeyance at least until I can have an opportunity of talking the whole question over with you as I hope will be possible next year.

In the meantime you will appreciate that I must issue some early statement in order to make the position clear to members of the House of Commons who continue to ask questions specifically concerning your two statements, and also to allay the anxiety of the natives in the Territories and re-establish their belief in the good faith of the United Kingdom Government in this matter. But whilst I am faced with difficulties in the House of Commons, I am conscious that you too have difficulties, and am anxious that we should help each other.

I should like, if you agree, to explain both in the House of Commons and to the populations of the Territories that your recent statements are to be read as an expression of your personal hope that circumstances will permit within a few years of the transfer of the Territories. I would propose also to repeat in my statement that His Majesty's Government in the United Kingdom stand by the *aide-mémoire* and explain that we interpret it on the lines indicated above. Further I should, if necessary, have to make it clear that we are not committed to transfer of the Territories, or of any one of them, within any specified period of time.

It would much assist me in preparing a statement on above lines if you could let Sir Cecil Fforde have at the earliest possible date for communication to me, any further observations which you may have. I can assure you that I sincerely support the policy of co-operation, and am anxious to do everything that I can to forward it.—*Ends.*

In communicating above message to General Hertzog please emphasize in personal message from myself that I greatly appreciate the readiness which he expressed in his talk with you to assist us in any way he could in getting over our difficulties (see end of your telegram No. 100*) and that I for my part shall do all I can to avoid making matters difficult for him.

10991/350. No. 85.

TELEGRAM

to

ACTING HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Sent 10 p.m., 29th June, 1936.)

(Paraphrase.)

No. 80. Reference my immediately preceding telegram†. The following message is from Sir Edward Harding.

Begins.—Confidential. The Secretary of State feels of course that General Hertzog has only himself to thank for a situation which must inevitably give a setback both to the prospects of transfer and to the policy of co-operation. Further, General Hertzog's references to economic pressure only make the position more difficult. But the immediate object of the Secretary of State is to get a statement which has been agreed in substance with General Hertzog and for this reason he thinks it inadvisable to rub in above points now.—*Ends.*

10991/357. No. 86.

TELEGRAM

from

ACTING HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received 8.55 p.m., 3rd July, 1936.)

No. 113. 3rd July. Confidential. Your telegram No. 79 of 29th June‡. I saw General Hertzog on the afternoon of 1st July which was the first possible opportunity and conveyed to him your personal message for which he expressed gratification stating that his attitude towards you and the British Government was of the most cordial nature and that he would be distressed if he thought that he had been the cause of any trouble or misunderstanding. I then handed to him copy of your message which he carefully read. He first showed resentment at the implied criticism and he remarked that it would be a terrible thing if this document were published here and added that he felt that the British Government never intended to transfer the Territories and that he had better deal with your message in a formal despatch. In somewhat excited manner he then expressed at some length views similar to those contained in his two recent speeches and at my

* No. 76. † No. 84. ‡ No. 84.

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first interview with him. When opportunity occurred I explained to him the importance attached to his views by the British public and unfortunate effect on them and on native opinion in the Territories if they were left as at present under the impression that behind the *aide-mémoire* existed other agreement(s) at variance with it. He then became cordial and I went through your statement with him in detail. The upshot of our discussion which was protracted was that he fully accepted the agreement contained in the *aide-mémoire* but differed as regards points of interpretation. He admitted that no other agreement verbal or otherwise was made by him with Mr. Thomas apart from that in the *aide-mémoire*. He also agreed that his recent statements in the House of Assembly were to be read as an expression of his personal hopes.

He was prepared to leave the question of financial assistance in abeyance. He welcomed the fact that there would be opportunity of discussing fully with you next year any points which might then require elucidation. He still regarded the expression " the next few years " in paragraph 4 of the *aide-mémoire* as a period of about three years, emphasized that acquiescence does not mean consent and explained that his statement of March, 1925, quoted in paragraph 2 of the *aide-mémoire* as implying that if the natives did not desire to come in they might be permanently excluded from the Union whose economic relations with the Territories would be re-adjusted accordingly. I should mention that General Hertzog's replies were somewhat discursive and not always consistent but it seemed to me that the basis of his divergence as regards the interpretation of the *aide-mémoire* contained in your message was that he was anticipating the position which might occur at the end of the next few years in question and that there is little or no difference in views as regards policy to be followed for these next few years. I put this point to him and the matter was then left on the basis that I should obtain his considered views to-day which was the first time he had free.

When I saw him to-day he was altogether most cordial. He was much quicker in appreciating the points of view of the controversy and clearer in explaining his own views. He had of course been engaged in a long Cabinet meeting prior to my former interview with him.

After a long and friendly discussion he then restated his views regarding the construction to be put on the *aide-mémoire* and on his statements. I took note of these views and read my record to him. He confirmed that my record was accurate. We then evolved statement which is being telegraphed separately of which he has retained a copy. General Hertzog authorized me to say that this statement correctly represents his views and may be made use of in any way you may wish. I trust that this statement will suffice for your purposes. I felt that it would be undesirable to press General Hertzog to express more fully his agreement with the various points at issue.

In conclusion the Prime Minister desired me to convey his thanks to the Secretary of State for giving him an opportunity to clear up any misunderstanding which his statement in the Legislative Assembly may have caused and he also wished me to say that he was very sorry indeed that his remarks which arose out of a question in the House and were not in the nature of a prepared speech should have given rise to misunderstanding and misgiving. The Prime Minister hoped that it would be possible to continue the policy agreed upon which he on his part would make every effort to further and to bring to a successful conclusion.

10991/358. No. 87.

TELEGRAM

from

ACTING HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE AND SWAZILAND.

(Received 8.55 p.m., 3rd July, 1936.)

[*Answered by No. 88.*]

No. 114. 3rd July. Confidential.—Following is statement referred to in my telegram confidential No. 113 of to-day*:—

Begins.—The Prime Minister's statements in the House of Assembly are to be read as an expression of his personal hope that if policies agreed to in *aide-mémoire* were loyally carried out by both Governments a position would within a few years be created which would permit of transfer of Territories with the goodwill of their populations.

* No. 86.

The Prime Minister stands by *aide-mémoire* and confirms that apart from agreement expressed in that document no other agreement or understanding exists as regards incorporation of the Territories in the Union. He agrees it is essential to the success of the policy of co-operation that it should not be hurried and that until that policy has had a fair trial any predictions as to the period within which such policy might be expected to succeed in bringing about situation which two Governments had in mind when *aide-mémoire* was issued must necessarily be in nature of conjecture.

He agrees that financial assistance offered by the Union could only be regarded as a factor which it was hoped would secure the goodwill of the natives. Acceptance of offer could not impair pledges already given by His Majesty's Government in the United Kingdom to consult the inhabitants of the Territories before any decision reached as to transfer nor would it be regarded as in any way committing the Chiefs on the point. The money was voted by Government of the Union for use in the Territories if His Majesty's Government in the United Kingdom should think it expedient to use it. If they should think it better to let the question of financial assistance stand over the Prime Minister would be perfectly willing that this should be done. The Prime Minister welcomes the fact that there will be an opportunity of talking the whole question over with the Secretary of State for the Dominions next year when the Prime Minister is in England for the Coronation.

As regards the question of instructions to officials in the Territories the Prime Minister's remarks in this context were merely intended to express his views that it is a necessary implication of the agreement in the *aide-mémoire* that instructions would be issued to these officers to discountenance efforts to influence the natives against transfer and to assist loyally and wholeheartedly in bringing to the notice of the population of the Territories the benefits provided by the Union as and when such benefits are conferred.

There is no agreement or understanding that transfer of the Territories or of any one of them should take place within any specified period of time.—*Ends.*

10991/358. No. 88.

TELEGRAM

to

ACTING HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Sent 7 p.m., 8th July, 1936.)

[*Answered by No. 90.*]

No. 81. Confidential. I was glad to receive your telegrams of 3rd July, Nos. 113* and 114†, and feel that the outcome of your discussions with General Hertzog was very satisfactory. Please let him know how greatly I appreciate the considerate manner in which he has met the points raised in my message and the helpful way in which he is co-operating to remove the misunderstandings which have arisen. I am telegraphing separately text of statement (based on statement agreed by you with General Hertzog) which I propose to make in reply to question in House of Commons on 14th July. Subject to any observations you may have I should be glad if you would communicate it to General Hertzog explaining as above. If he has any observations on its terms he would no doubt let you have them at once for communication to me. I propose that when suggested statement has been made here you should instruct the Resident Commissioners to communicate it to Native authorities in the Territories with any supplementary explanations you may think desirable. For your information Colonial Development Advisory Committee are in meantime being asked if they would agree to recommend that Basutoland anti-erosion scheme should for time being be entirely financed from Colonial Development Fund.

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* No. 86. † No. 87.

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10991/358. No. 89.

TELEGRAM

to

ACTING HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Sent 8 p.m., 8th July, 1936.)

No. 82. Confidential. Following is text of proposed statement referred to in my telegram No. 81*:—

Begins.—The Acting High Commissioner for Basutoland, the Bechuanaland Protectorate and Swaziland has been in communication with the Prime Minister of the Union of South Africa regarding the recent statements made by General Hertzog in the Union House of Assembly in connexion with the question of the transfer of these Territories to the Union. General Hertzog states that he stands by the terms of the *aide-mémoire* of last year and confirms that it is a full statement of the agreement reached between him and my predecessor. He has explained that his recent statements are to be read as an expression of his personal hope that if the policy agreed to in the *aide-mémoire* is loyally carried out by both Governments, a position would within a few years be created which would permit the transfer of the Territories to the Union with the goodwill of their populations. He agrees however with the view of His Majesty's Government in the United Kingdom that it is essential to the success of the policy of co-operation that it should not be hurried and that until that policy has had a fair trial any predictions as to the period within which such a policy might be expected to succeed in bringing about the situation which the two Governments had in mind when the *aide-mémoire* was issued must necessarily be in the nature of conjecture.

I should like to take this opportunity to make it clear that there is at present no agreement or understanding between the Governments that the transfer of the Territories or of any one of them should take place within any specified time.

His Majesty's Government in the United Kingdom welcomed the recent generous offer of the Union Government to share in the cost of certain development schemes in the Territories as being in the spirit of agreement embodied in the *aide-mémoire* and they accordingly advised the Native Authorities to co-operate. It was made clear to the Native Authorities that the acceptance of this offer could not impair the pledges already given by His Majesty's Government in the United Kingdom to consult the inhabitants of the Territories before any decision is reached as to transfer, and that such acceptance would not be regarded as in any way committing the Chiefs on the point. In view however of the uneasiness which it is understood is still felt by the Native Authorities on the subject, His Majesty's Government in the United Kingdom have now come to the conclusion that it would be preferable for the proposal for such financial asistance on the part of the Union Government to remain in abeyance for the present. General Hertzog has stated that he is entirely willing to agree to this course.—*Ends.*

10991/362. No. 90.

TELEGRAM

from

ACTING HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received 9.27 p.m., 9th July, 1936.)

No. 118. 9th July. Confidential. Your telegram No. 81 confidential of 8th July*. I communicated to General Hertzog this afternoon the statement contained in your telegram No. 82 confidential of 8th July† and gave him a copy of it. I first conveyed to him your personal message and explanation contained in former telegram. He was very grateful at your expression of appreciation. He is in complete agreement with the form and substance of the statement contained in your latter telegram and had no further observations. My interview with him was of the most cordial nature. Before

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* No. 88. † No. 89.

communicating statement to General Hertzog I considered whether portion " in view of—authorities " could be held to apply to Baralong and Bakhatla as prior to General Hertzog's speech tribes had agreed to accept financial aid offered by the Union. Having regard however to communication of 1st July from Rey stating it is at least doubtful whether these tribes would have voted for acceptance had they discussed the question in Kgotla after hearing the terms of these speeches, I thought that the above statement might be regarded as substantially correct and that it would be undesirable to suggest insertion of word " majority " before " native authorities " in the above portion as this might tend to raise the question whether in the case of these two small tribes part of whom are in the Union Territory, financial assistance could be accepted when other tribes refuse such assistance.

As it is important that the Resident Commissioners should be *au fait* with the statement when it appears in the Press I am communicating to them copies with personal and secret letters instructing them not to communicate it to anyone until I have received your authority for its release. It would undoubtedly also assist Rey if he could be authorized to furnish copies in secrecy to each officer in charge of a tribal district. I shall be glad to be informed if you can agree to this. I think that no supplementary explanatory statement should be necessary for Swaziland and that in the case of Basutoland it would only be necessary to say that His Majesty's Government are considering the question of provision of funds for anti-erosion schemes. As regards Bechuanaland Protectorate if you see no objection I should like to authorize Rey to exercise his discretion regarding explanation which his officers in touch with native authorities should make to relate your statement to communication previously made at Kgotla meeting regarding proposed financial contribution and your assurance to the chiefs contained in your telegram No. 55 confidential of 4th May* on the understanding that such explanation in so far as it may relate to General Hertzog's speech or the Union Government must not go beyond the terms of your statement.

P.Q. 10991/41. No. 91.

TELEGRAM

to

ACTING HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Sent 8 p.m., 16th July, 1936.)

[*Answered by No. 93.*]

No. 89. I made statement in House of Commons to-day in terms set out in my telegram No. 82 of 8th July†, with omission of words " at present " before words " no agreement " in paragraph 2.

10991/108. No. 92.

ADDENDUM TO DOMINIONS OFFICE MEMORANDUM OF OCTOBER, 1934, ON TRANSFER‡.

1. On the 6th November, 1934, General Smuts at a dinner given in his honour in London, made a speech in the course of which he urged that the early transfer of the Territories was advisable in order to avoid the danger of an agitation in the Union for treating them as " foreign territories " with a view to excluding their exports from the Union market and also in order to avoid all possible sources of friction between the United Kingdom and the Union Governments. The Secretary of State replied that he knew that General Smuts would not expect him to reply to these references to what had rightly been described as a matter that deeply concerned South Africa at the moment.

2. In March, 1935, the High Commissioner for the Territories, Sir William Clark, had two separate conversations with General Hertzog and General Smuts respectively on the subject of transfer. The general impression left by these conversations was that both General Hertzog and General Smuts were rather embarrassed by the situation which they had helped to create. They

* No. 58. † No. 89. ‡ No. 9.

realized that it would not be judicious to press the matter unduly, but they were genuinely anxious lest pressure should be brought upon them by their supporters and especially pressure by the farmers. In these circumstances, it seemed unlikely that General Hertzog would be content during his forthcoming discussion with the Secretary of State, which he asked the High Commissioner to arrange, to limit himself to the question of the possibilities of closer co-operation between the Territories' Administrations and the Union Government, unless it could be shown that such co-operation would represent an advance towards transfer. General Hertzog himself said that he would be satisfied if the United Kingdom Government would undertake to transfer the Territories to the Union within a specified period. General Smuts, on the other hand, did not think that such a request would be reasonable, but seemed to want " something " to be said to General Hertzog which would indicate some relaxation of what he regards as a certain rigidity in the United Kingdom Government's attitude on the question. He did not formulate his views more precisely or make any definite suggestion as to what that " something " should be.

3. On the 27th March, 1935, the Southern Rhodesia Government sent a despatch† to the Secretary of State stating that, in view of Press reports that a claim was being made by the Union Government for the transfer of the Territories, they wished to notify the willingness of Southern Rhodesia to undertake the administration of the entire Bechuanaland Protectorate, or alternatively, should this be considered inexpedient, of at least the northern part of the Protectorate. The despatch added that in either event the Southern Rhodesia Government would be prepared to agree to the amendment of the Constitution Letters Patent in such a way as to guarantee complete absence of customs barriers or fiscal differentiation between the territory so transferred and Southern Rhodesia, and that they would also agree to any restrictions on the legislative or executive powers of the Government over the territory so transferred which the Secretary of State might think desirable for the protection of the native reserves and the interests of the native inhabitants of the territory. In reply* the Southern Rhodesia Government were referred to the Secretary of State's statement in the House of Commons on the 23rd May, regarding his recent discussions with General Hertzog (see paragraph 4), and were assured that their views would not be overlooked in connexion with future developments as to the position of the Protectorate.

4. On the 14th May, 1935, General Hertzog, who was then in England, had a discussion with the then Secretary of State for Dominion Affairs regarding the future of the High Commission Territories. At this discussion it was agreed that the policy of the Union and the United Kingdom Governments for the next few years should be directed to bringing about a situation in which, if transfer were to become a matter of practical politics, it could be effected with the full acquiescence of the population concerned. It was felt to be an essential condition of the success of such a policy that the native population of the Territories should feel that the Union Government were working in concert with the local Administrations with a real and generous desire to develop and improve conditions in the Territories and that for that purpose the Governments concerned should consider jointly what practical steps could be taken for promoting co-operation between the Union Government and the Administrations of the Territories. The terms of the agreement are embodied in an *aide-mémoire* which was accepted by General Hertzog and published as Cmd. 4948.

5. In accordance with this agreement, discussions took place in South Africa between the High Commissioner and the Union Government, as a result of which the Union Government offered, *inter alia*, to contribute fifty per cent of the cost of certain schemes for combating soil erosion in Basutoland and for developing water supplies in the other two Territories, which had been recommended by Sir Alan Pim in his various reports on the Territories. In the course of these discussions it was emphasized by the High Commissioner to the Union representatives that such financial assistance could only be regarded as one of the measures to be taken towards securing the goodwill of the natives; that the linking of the question of transfer with the Union offer would, at the present stage, have the effect of defeating the object of the offer; and that it would be impossible to proceed with the proposals if the Union offer was based on the assumption that the United Kingdom Government were prepared to instruct the local officials and to let the natives know that the Territories would be transferred to the Union in a fixed time.

* No. 22.

The representatives of the Union Government accepted this view of the position and also agreed to the terms of a statement to be made simultaneously with the announcement (the terms of which were also agreed) of the offer in the United Kingdom and the Union Parliaments explaining and recommending the proposals to the native authorities in the Territories.

6. The first reactions of the native authorities were adverse to acceptance of the Union Government's offer on the ground that they did not wish to come under the administration of the Union and preferred therefore not to place themselves under any obligation to the Union Government. Their attitude generally was one of alarm and suspicion that the pecuniary assistance offered was part of a bargain which had been concluded for handing them over to the Union Government. On further consideration, however, the Paramount Chief of Basutoland declared that he would be prepared to accept the offer, provided that he could be given an assurance by the Secretary of State that acceptance would not impair the pledges given in the past by His Majesty's Government in the United Kingdom that Parliament here and the inhabitants of the Territories would be consulted before any decision was reached as to transfer, or be regarded as in any way committing the Paramount Chief on that question. The High Commissioner was authorized to give this assurance.

7. Since a favourable decision by Basutoland was bound to influence the natives of the other two Territories in the same direction, the prospect of securing native acceptance of the Union offer was most hopeful, when on the 11th June, General Hertzog made a statement in the Union House of Assembly on the vote of £35,000 in respect of the Union share of the cost of the above-mentioned development schemes in the Territories during the current financial year. In the course of this statement General Hertzog said that when he was in England in 1935 he had been given a " definite assurance that the British Government would use every effort to see that the transfer took place " and that " the British Government would immediately give instructions to the British authorities who were entrusted with the administration of the Territories to give the natives to understand, gradually to make them understand, that after a time they would have to go into the Union, to be administered by the Union, and of course it was at the same time understood that I, on my part, on behalf of the Union undertook to do everything in our power to obtain the goodwill of the population in these territories. Since last year we have been in the position that England is actually only holding these Territories for us, to hand them over to us . . . . at the proper moment." General Hertzog added that he had been informed that transfer would have to be effected by stages, probably beginning with Swaziland, and that in about two years he might expect the first Territory to be transferred, to be followed a year or so after with a second, and so on till all three had been transferred.

8. These statements, which seem to have represented General Hertzog's personal hopes rather than any assurances that he had been given, created such an unfavourable impression on native opinion that there was no alternative but to inform General Hertzog that it would be necessary to allow the Union offer to remain in abeyance, since persistence with it would only have the effect of hardening the attitude of the natives; and to defer the question of such further co-operation in the Territories with the Union Government until there had been an opportunity of discussing the whole matter again with him when he came to England in 1937. General Hertzog acquiesced in this course, and with his concurrence the Secretary of State made the following statement in the House of Commons on the 16th July:—

" The Acting High Commissioner for Basutoland, the Bechuanaland Protectorate and Swaziland has been in communication with the Prime Minister of the Union of South Africa regarding the recent statements made by General Hertzog in the Union House of Assembly in connexion with the question of the transfer of these Territories to the Union. General Hertzog states that he stands by the terms of the *aide-mémoire* of last year, and confirms that it is a full Statement of the agreement reached between him and my predecessor. He has explained that his recent statements are to be read as an expression of his personal hope that, if the policy agreed to in the *aide-mémoire* is loyally carried out by both Governments, a position would, within a few years, be created which would permit the transfer of the Territories to the Union with the goodwill of their populations. He agrees, however, with the view of His Majesty's Government in the United Kingdom that it is essential to the success of the policy of co-operation that it should not be hurried, and that until that policy

has had a fair trial any predictions as to the period within which such a policy might be expected to succeed in bringing about the situation which the two Governments had in mind when the *aide-mémoire* was issued, must necessarily be in the nature of conjecture. I should like to take this opportunity to make it clear that there is no agreement or understanding between the Governments that the transfer of the Territories or of any one of them should take place within any specified time.

His Majesty's Government in the United Kingdom welcomed the recent generous offer of the Union Government to share in the cost of certain development schemes in the Territories as being in the spirit of the agreement embodied in the *aide-mémoire*, and they accordingly advised the native authorities to co-operate. It was made clear to the native authorities that the acceptance of this offer could not impair the pledges already given by His Majesty's Government in the United Kingdom to consult the inhabitants of the Territories before any decision is reached as to transfer, and that such acceptance would not be regarded as in any way committing the chiefs on the point. In view, however, of the uneasiness which, it is understood, is still felt by the native authorities on the subject, His Majesty's Government in the United Kingdom have now come to the conclusion that it would be preferable for the proposal for such financial assistance on the part of the Union Government to remain in abeyance for the present. General Hertzog has stated that he is entirely willing to agree to this course."

Dominions Office,
September, 1936.

10991/383.

No. 93.

DESPATCH

from

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND

(Received 24th September, 1936.)

(No. 604, confidential.)

SIR, High Commissioner's Office, Pretoria, 15th September, 1936.

With reference to your telegram No. 89 of the 16th July* and connected correspondence regarding the co-operation of the Union Government in development measures in the High Commission Territories, and the question of the transfer of the Territories to the Union, I have the honour to transmit herewith a copy of a despatch from the Resident Commissioner of Swaziland forwarding a letter from the Paramount Chief of the Swazi nation.

I have, &c.,
CECIL FFORDE,
High Commissioner.

Enclosure in No. 93.

(No. 412.) Resident Commissioner's Office,
SIR, Mbabane, Swaziland, 11th September, 1936.

I have the honour to forward for Your Excellency's information a letter in original from the Paramount Chief which was handed in to the Deputy Resident Commissioner yesterday evening on the subject of the proposed transfer of Swaziland to the Union.

I have, &c.,
A. G. MARWICK,
Resident Commissioner.

His Excellency
Sir Cecil Fforde, K.C.,
High Commissioner.

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* No. 91.

His Honour,
The Resident Commissioner,
Swaziland.

SIR,

I have the honour to inform you that I and my people have been made very apprehensive by certain statements which various Ministers of States of the Union of South Africa are reported to have made.

2. I refer firstly to a statement which appeared in the *Cape Times* in May, 1933, in which Mr. Duncan, the Minister of Mines, when pressed to exclude from employment on the mines of the Union natives, living in the High Commission Territories, is reported to have said that it might become necessary to do so.

3. The *Johannesburg Star* of the 17th June, 1936, published a report of a statement by General Hertzog in the House of Assembly containing amongst other things this passage:—

> "If the natives wanted to remain under the control of Great Britain now that Great Britain was prepared to hand over the Protectorates to the Union, then the Union would be forced to close her markets to the Protectorates. He hoped Colonel Stallard would use his influence to bring about the transfer as soon as possible and *tell the natives that the longer they remained out of the Union the more heavily would they have to pay for it.*"

4. There then followed the speeches of Colonel Reitz, the Minister of Agriculture of the Union, on the occasion of the Bremersdorp Show and in the *Swaziland Times* of the 16th July appears a report of these speeches from which I quote the following passages:—

> "He would like to stress another delicate matter and that was that if the Territories remained obstinate they (the Union) were going to look after their own natives and their own trade . . . .
>
> The point we have made was that if in the long run the Swazi people were unwilling to agree to carry out the intentions of the South African Government their own natives would have to be protected against Swazi competition. . . .
>
> They had to remember that at Ottawa it was clearly understood that every part of the Empire was at liberty to protect its own home markets and all they were doing was to give their home markets the advantage against outside."

5. I believe that Mr. Grobler, the Minister of Native Affairs in the Union, at about the same time made a similar statement at Vryburg though I am sorry that I cannot give any exact reference to it.

6. The account in the *Johannesburg Star* of the 12th June of General Hertzog's speech in the House of Assembly on the 11th June, contained this passage:—

> "It must be remembered that when the Territories were taken over it would not be the British Government but the Union which would have to spend money for development. What was being done now would in any case have to be done by the Union at some time . . . . "

and in the report of the *Johannesburg Star* of the 17th June of General Hertzog's speech of the 16th June, there appears this passage:—

> "The contribution from the Union which was discussed the other day was intended to assist in forming the required goodwill as quickly as possible. It was desired to make them see that they would be just as well off if not better than before."

7. It will be remembered that shortly after his return from England to South Africa in June, 1935, General Hertzog made another statement which did not accord with the understanding the British Government had of the conversation he had with Mr. Thomas in May, 1935, and that he should again have given expression to a similar misunderstanding gives me grave fears that this evident want of understanding between the two Governments on matters vital to us may result in irreparable injury to me and my people. It also abundantly justifies my having questioned at one meeting of the Swazi National Council on the 28th March whether the requisite understanding existed. I said:—

> "It is possible that they (the two Governments) may not have the same understanding or be of one mind with regard to all the results which might flow from this offer of assistance."

8. It appears to me that the statement of the Secretary of State of the 16th July has not disposed of these divergencies and it is now superabundantly clear to me that if we had accepted the offer it would annually have been followed by similar offers which, having accepted the first, we could not have refused, until in good time the Union Government would have pressed for the transfer. And in that day we could not have felt that it was consistent with honour and straight dealing to refuse.

9. On the contrary our Government has advised us to accept an offer from the Union Government though we have been told by you Sir, upon the authority of the Secretary of State, that this offer is a purely voluntary one and acceptance would not impair the pledge given by the British Government to consult the inhabitants of the Territory.

10. That is extremely compromising and embarrassing position in which we could have been placed had we followed the advice which our Government gave us. They withheld from us the essential information that would have enabled us properly to estimate our position, and yet advised us to accept an offer which must inevitably have led to finding ourselves unable honourably to refuse transfer to the Union.

11. In these circumstances I must importune the Government to tell me in the plainest possible language whether there is any practicable alternative to our accepting a transfer to the Union.

12. Without this knowledge I may be unable to guide my people from a grave disaster because they will refuse to believe that Great Britain is unable to defend them, and they will continue to refuse the offers still to be made to us by the Union Government possibly until brought to our knees by the force of economic circumstances.

13. The impatience which was exhibited in General Hertzog's speeches in the House of Assembly on the 11th and 16th June seems to me to be a danger signal which we should not ignore, although he later agreed that it is essential to the success of the policy of co-operation that it should not be hurried.

14. Hitherto I and my people have felt very secure in the shelter of Great Britain's protection and I wish to assure you Sir that there has been no diminution in the strength of the sentiments of loyalty and devotion which we cherish for His Majesty nor in the depth and sincerity of our gratitude to the Government and people of Great Britain for all that they have done for this country in the past.

15. We have been confident that Great Britain's protection would be given and would be thoroughly effective even if we declined the offers of co-operation by the Union Government envisaged in the *aide-mémoire* recording the understanding reached between the late Secretary of State and General Hertzog in 1935, but I think it will be considered that we lack the information which would enable us to make anything like an accurate judgment of the situation.

16. In these circumstances we look to our Government for this information.

17. We are mindful of the undertakings given from time to time by the British Government that before the question of transfer is finally settled we, together with the other inhabitants of Swaziland, will be consulted. Such a consultation it appears to me will be of very little or any avail to us unless we are placed in a position to make a wise selection, and this I submit has hitherto not been the case.

18. Should I try to persuade my people to accept the co-operation of the Union Government without the authoritative information to which I referred, not only would I be unsuccessful, but I would also lose much of the trust and confidence which they have now in me, for they would say that I was trying to get their consent to transfer although the Government had given no indication that it would or would not support us in rejecting Union co-operation.

19. It seems to me of considerable importance that I should be given an early reply to this communication otherwise I fear that a renewal of the Union offer with or without an additional offer may be made while my people are still unaware of the true position and before they have had any opportunity to consider the matter on its merits.

20. I wish to emphasize that if any mistake is made the suffering therefore will fall upon me and my people; if on account of a genuine mistaken faith in the power and willingness of the Government to protect us we make such a mistake, I would not be alone in considering that much of the responsibility will rest on the Government while all the suffering will fall on us. I therefore hope that the Government will agree with me that if I and my people are to have any share of suffering and the blame for any mistake, then we should be taken fully into the Government's confidence in the direction I have indicated.

21. I was glad to observe from the statement by the Secretary of State for the Dominions in the House of Commons on the 16th July that General Hertzog had considerably modified the statements which he had made in the House of Assembly as to the time of transfer, but I was disappointed to find that the statement of the Secretary of State left unanswered entirely those parts of the statements of the Union Ministers which foreshadow our exclusion from the markets of the Union in certain eventualities, and I and my people have been given no indication as to how the British Government would act if the measures referred to by the Union Ministers were carried into effect.

22. If I am to lead my people wisely I consider that I should be supplied with this information or with the Secretary of State's advice as to how he believes the British Government would act and whether he regards it as within the competence of the Union Government to make effective the measures to which I have referred.

I have, &c.,
SOBHUZA II

10991/385. No. 94.

DESPATCH
from
HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE AND SWAZILAND.

(Received 13th November, 1936.)

(No. 693.)

SIR, Pretoria, 3rd November, 1936.

I have the honour to report that on Friday, the 30th October, I received at my house the following Chiefs:—

SOBHUZA, Paramount Chief of the Swazi Nation.
TSHEKEDI KHAMA, Acting Chief of the Bamangwato.
KGARI SECHELE, Chief of the Bakwena.
SEBOKO MOGOSI, Chief of the Bamalete.
MATLALA GABERONE, Chief of the Batlokwa.
BATHOEN, Chief of the Bangwaketsi.
GAETSALWE MOREMI, Acting Chief of the Batawana.

The health of the Paramount Chief of Basutoland did not permit him to attend, and I did not suggest that he should send a representative as I propose to pay a visit to

Basutoland early in December. The Chiefs were accompanied by a considerable number of their followers. The three Resident Commissioners, the Administrative Secretary and other officers of my staff were present.

2. I read to the Chiefs the Address, of which the more important paragraphs were submitted to you before I left England. A copy is enclosed herewith. The address was translated sentence by sentence as I read it into Swazi and Sechuana. It was well received, and the announcement that His Majesty the King had instructed me to convey his greetings to the Chiefs was greatly applauded. It was obviously desirable that there should be no public discussion, so as soon as I had finished reading the address I suggested adjournment to the verandah where tea would be served. While this was going on I received each of the Chiefs separately in my room, their respective Resident Commissioners being present.

3. My only talk of importance was with Sobhuza, Paramount Chief of the Swazis. You will recall that he had addressed a letter on the 10th September to the Resident Commissioner, a copy of which was forwarded to you in Sir Cecil Fforde's despatch No. 604 of the 15th September*. I told the Chief that I was somewhat surprised at the tone of some paragraphs in this letter, but that after discussing the matter with Mr. Marwick I accepted that he had not intended discourtesy to the British Government. At the same time he had no justification for suggesting that the Government had withheld information from him, and I thought he ought to have realized that the position had been made entirely clear by the Secretary of State's announcement in the House of Commons on the 16th July†. It was impossible for me to tell him what steps the British Government might take in the event of the Union applying economic pressure on the Territories with a view to securing their incorporation, since such action must evidently depend upon the circumstances at the time if and when such a contingency should arise. It was true that certain Union Ministers had on occasions hinted at something of the kind, but my own contacts with Union Ministers did not suggest that there was any need for anxiety.

4. It is not easy to say how far this exposition removed Sobhuza's doubts. He speaks English volubly but rather unintelligibly, and I found it difficult to follow what he said. I asked him whether he was seriously contemplating any approach to the Union Government as he appeared to have hinted to Mr. Marwick; but his reply did not go beyond a general statement that he might have to consider doing so. I told him that I hoped it was perfectly clear to him that my Government desired to exercise no pressure upon him towards transfer; our only desire was to serve the best interests of his people; and I trusted that when he had had time to think things over he would come to me for advice about any action which he was contemplating.

5. My talks with the Bechuana Chiefs were in very general terms having regard especially to the difficult position in which we stand towards Acting Chief Tshekedi and Chief Bathoen in respect of the recent trial. No matter of importance was brought forward by any one of them.

6. I felt that the whole ceremony was distinctly a success. The Chiefs seemed pleased at being invited to High Commission House and to appreciate their reception, and they listened with evident attention to the reading of the Address.

I have, &c.,

W. H. CLARK,

High Commissioner.

Enclosure in No. 94.

PARAMOUNT CHIEF AND CHIEFS.

As you are aware, I have only recently returned from a holiday in England. I had hoped before I left South Africa to have paid a second visit to each of the Territories but my illness last summer prevented me. I was the more glad therefore to find on my return that some of you were about to visit the great Empire Exhibition at Johannesburg and consequently would be near Pretoria. It may be some little time before I am able to leave my work at headquarters and tour the Territories, so I have taken this opportunity of inviting you here in order that I may greet you once again.

I had the honour during my stay in England to be received by His Majesty the King. He was greatly interested in the Territories which, as you know, are familiar to him from his visits when

* No. 93. † See No. 91.

he was Prince of Wales. He spoke with keen appreciation of the loyal welcome which he had then received from you and your peoples, and he asked me to convey his greetings to you. You will, I know, deeply appreciate this great honour.

You will also be glad to know that I had many talks about the affairs of the Territories with Mr. Malcolm MacDonald, the Secretary of State for Dominion Affairs. Mr. MacDonald has many and heavy responsibilities, for he has under his care the relations of the Mother Country with all the Dominions overseas, but he finds time to follow very closely all that concerns the Territories and takes the keenest interest in their welfare. He asked me many questions about their progress and about the many problems which have arisen since I assumed the office of High Commissioner. He wished to hear everything I could tell him about their administration; about your exercise of your responsibilities as Chiefs of your several peoples and tribes; about the developments which we have been able to effect in matters bearing upon the health, the education, the economic prosperity of the peoples. It was a great pleasure to be able to report to him that in many matters satisfactory progress was being made, and you will be glad to hear that, thanks to his support, there are good prospects of a further advance in the near future.

Among other matters on which he spoke to me there was naturally the very important question of the relations between the territories and the Union. A copy of the statement on the subject which the Secretary of State made in the British House of Commons on the 16th July was communicated to you and I am sure that after reading it you found no room for doubt as to the intentions of the British Government towards you. Mr. MacDonald made it entirely clear that there was no agreement or understanding between the Governments that the transfer of the Territories or of any one of them should take place within any specified time. He made it very clear also that the acceptance of offers of co-operation by the Union Government in the economic development of the Territories did not impair the pledges given by His Majesty's Government in the United Kingdom to consult the inhabitants of the Territories before any decision was reached as to transfer, and that such acceptance could not be regarded as in any way committing you on that point. He added, however, that in view of the uneasiness which was still felt by you on the subject, His Majesty's Government had come to the conclusion that it would be preferable for the proposal for such financial assistance to remain in abeyance for the present; and General Hertzog, as you know, has expressed his entire willingness to agree to this course. The Secretary of State wishes me to assure you that this statement of his represents the considered policy of His Majesty's Government. He wishes you to know that there has been, and will be, no departure from the pledges given to the chiefs and peoples of the Territories. At the same time he endorses the policy agreed between his predecessor, Mr. Thomas, and General Hertzog last year, and intends that every endeavour should be made to secure the closest possible co-operation between the Union Government and the Administrations of the Territories.

I said just now that the proposals for financial assistance by the Union Government in the economic development of the Territories are to remain in abeyance for the present. My Government, however, are endeavouring to arrange that the Territories shall not suffer in consequence. As regards the important works which are to be undertaken for combating soil erosion in Basutoland, monies have already been made available from the Colonial Development Fund equivalent to the full amount which was to have been jointly contributed by the British Government and the Government of the Union. The sum of £25,000 has been provided for water-boring schemes in Bechuanaland during the current year and the possibility of making provision for a further period of years is under examination. In the case of Swaziland the Colonial Development Fund has already provided assistance towards water conservation, extension of hospitals and medical facilities, improvement of native cattle and pastures and for other purposes: the question of the provision of an experimental farm is now receiving my consideration and I have also authorized the investigation of additional schemes for the further conservation of water supplies in native areas. You can all rest assured that the economic development of your countries will continue to receive sympathetic consideration by my Government.

I have visited with interest the exhibits of the Bechuanaland Protectorate and Swaziland and the Swazi Kraal at the British Empire Exhibition at Johannesburg. I am sure that those of you who have been to the Exhibition will have realized the great educational value of an undertaking of this kind where the products and manufactures and arts and crafts can be seen of the various Territories there represented. For this reason I am glad to learn that arrangements have been made for adults and particularly school children from the Bechuanaland Protectorate and Swaziland to travel to Johannesburg and to see these things.

Paramount Chief and Chiefs I shall hope next year once more to visit your Territories and to see for myself how you and your peoples are progressing. In the meantime I have been glad to see you again and I wish you all good things in the months which lie ahead. I have spoken.

BAMANGWATO RESERVE

(1) Abandonment by the British South Africa Company of Mining Concessions in the

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20285/43.

No. 95.

TELEGRAM

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 3.20 p.m., 10th August, 1934.)

No. 121. 10th August. Your despatch of the 30th June, 1932, No. 259*. British South Africa Company has given notice of intention to abandon Bamangwato Mineral Concession.

20285/44.

No. 96.

DESPATCH

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 3rd September, 1934.)

(Bechuanaland Protectorate.)
(No. 632.)

High Commissioner's Office, Pretoria,
10th August, 1934.

SIR,

With reference to my telegram No. 121 of to-day†, I have the honour to transmit herewith a copy of the letter which has been received from the Resident Director of the British South Africa Company, Salisbury, giving notice of the Company's intention to abandon its mineral concession in the Bamangwato Reserve which was granted by the Agreement, dated the 21st March, 1932, between the Company and Acting Chief Tshekedi. I enclose also a copy of the acknowledgment of Colonel Robins' letter.

2. As regards the date of abandonment you will observe that it has been pointed out to Colonel Robins that under Clause 4 of the Agreement the Company is required to give three months' notice of its intention to abandon the concession.

I have, &c.,
H. J. STANLEY,
High Commissioner.

Enclosure 1 in No. 96.

(No. 1227.)

The British South Africa Company,
Charter House, Salisbury,
8th August, 1934.

SIR,

Bamangwato Concession.

With reference to the Agreement, dated 21st March, 1932, made between this Company and Chief Tshekedi, I hereby give you notice in terms of Clause 4 of the Agreement that it is the intention of the British South Africa Company to abandon this concession as from this date, and I am likewise advising Chief Tshekedi of the Company's intention in this connexion.

Your acknowledgment of this notice, in due course, will be appreciated.

I have, &c.,
T. E. ROBINS,
Resident Director.

The Administrative Secretary,
Office of High Commissioner,
Pretoria.

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* No. 38 in Dominions (South African) No. 5.

† No. 95.

Enclosure 2 in No. 96.

(No. 2237.)

Pretoria, 10th August, 1934.

SIR,

I am directed by His Excellency the High Commissioner to acknowledge the receipt of your letter No. 1227 of the 8th August, giving notice, in terms of Clause 4 of the Agreement, dated the 21st March, 1932, between the British South Africa Company and the Acting Chief Tshekedi, of the intention of the Company to abandon the mineral concession in the Bamangwato Reserve.

I am to observe that under Clause 4 of the Agreement the Company is required to give three months' notice of its intention to abandon the concession.

I am, &c.,
SHIRLEY EALES,
Administrative Secretary
to the High Commissioner.

The Resident Director,
The British South Africa Company.

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(2) Re-transfer of two strips of land in Tuli Block.

20285/45.

No. 97.

SIR HERBERT STANLEY (HIGH COMMISSIONER FOR SOUTH AFRICA)

to

SIR EDWARD HARDING (DOMINIONS OFFICE).

(Received 1st October, 1934.)

(No. 2237.)

Pretoria, 18th September, 1934.

MY DEAR HARDING,

In connexion with the notice which has been given by the British South Africa Company to abandon its mineral concession in the Bamangwato Reserve (see my despatch No. 632 of the 10th August*) the question may arise whether the Company is entitled to obtain re-transfer of the two strips of land in the Tuli Block which were vested in the High Commissioner, in trust for the Chief and the tribe, in terms of clause 5 of the Agreement of the 21st March, 1932, between Tshekedi and the Company. The land was vested in the High Commissioner by Proclamation No. 45 of 1933, of which a print is attached for convenience.

It will be seen on reference to clause 5 of the Agreement (print enclosed in my despatch No. 338 of the 8th June, 1932†) that transfer of the two strips to the High Commissioner was subject to a proviso that

> "if mining ceases to take place in the Bamangwato country within the prescribed period of twenty years otherwise than by default of the Grantees the High Commissioner shall re-transfer the said two strips of land to the Grantees."

The question whether the Company will now be entitled to obtain re-transfer of the land as from the 10th November (the date on which the Company's notice of abandonment of the Tshekedi Concession expires) would appear to depend upon whether it could be maintained that, by reason of the Company's abandonment of the concession, mining had ceased to take place in the Bamangwato Reserve "by default of the Grantee." We have talked the matter over with Fforde who inclines to the view that the word "default" as used in this context probably would have to be interpreted to mean failure by the Company to carry out some statutory or contractual obligation, and not merely therefore the consequence of a voluntary act for which provision had been made in the Agreement; in other words that the Company's decision to abandon the concession in terms of the Agreement is not a default which would preclude the Company from obtaining re-transfer of the two strips of land. He expressed this view however quite informally, and rather as an impression than as a considered opinion. He thought that the record of an opinion by him in the sense which it would probably take might prove embarrassing to me as indicating an obligation on me to re-transfer the strips even if the Company did not ask for their re-transfer.

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* No. 96.

† 20285/36: not printed.

For the sake of the Bamangwato, to whom the loss of the right of access to the river by means of these strips would, no doubt, be unwelcome, I do not propose to move in the matter unless and until some steps are taken by the Company, but you may like to have this letter on your files in case the point should be raised in London, or become the subject of a telegraphic reference from here.

Yours, &c.,
H. J. STANLEY.

20285/48.

No. 98.

TELEGRAM

from

HIGH COMMISSIONER FOR SOUTH AFRICA.

(Received 5.4 p.m., 22nd October, 1934.)

[*Answered by No. 99.*]

No. 154. 22nd October. My semi-official letter No. 2237 18th September to Harding*. B.S.A. Company have now applied to me for re-transfer of 2 strips of land in Tuli Block which were vested in the High Commissioner in trust for Bamangwato by Proclamation 45 of 1933.

Fforde advises that mining has not ceased by default of Company as they have not failed to observe any of the covenants by which they were bound and consequently that they are entitled to re-transfer which should be effected by proclamation.

I agree with him but before taking action should be glad to know whether you concur.

20285/48.

No. 99.

TELEGRAM

to

HIGH COMMISSIONER FOR SOUTH AFRICA.

(Sent 4.55 p.m., 24th October, 1934.)

No. 123. Your telegram No. 154 of 22nd October†. Re-transfer of land to British South Africa Company. I concur. You will no doubt take steps to have position explained to Tshekedi.

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(3) Withdrawal of the Bamangwato Reserve from the operation of the Bechuanaland Protectorate Mining Laws

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20285/51.

No. 100.

DESPATCH

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 19th November, 1934.)

(Bechuanaland Protectorate.)

(No. 869.)

SIR, High Commissioner's Office, Pretoria, 27th October, 1934.

With reference to previous correspondence regarding the abandonment by the British South Africa Company of their Agreement with Acting Chief Tshekedi, dated

* No. 97. † No. 98.

the 21st March, 1932, relative to prospecting and mining in the Bamangwato Reserve, I have the honour to transmit herewith, for your information, a copy of correspondence on the subject of an application which has been received from the Chief for the withdrawal of the Bamangwato Reserve from the operation of the Bechuanaland Protectorate Mines and Minerals Proclamation No. 33 of 1932.

I have, &c.,
H. J. STANLEY,
High Commissioner.

Enclosure 1 in No. 100.

(No. 7389.)

SIR, Resident Commissioner's Office, Mafeking, 9th October, 1934.

I have the honour to attach herewith a letter dated 12th September addressed to Your Excellency by Acting Chief Tshekedi Khama, making application to have the Bamangwato Territory withdrawn from the operation of the Mines and Minerals Proclamation of 1932.

2. I also attach a copy of a minute of the 28th September received from the Registrar of Deeds setting out his views on this subject for Your Excellency's information.

3. I agree with the opinion that there is nothing to be gained by the Chief in the withdrawal of the Reserve from the operation of the Mining Law, and that on the contrary such withdrawal would leave the Bamangwato Territory outside the protection and control which such law affords.

4. In these circumstances I cannot recommend the application referred to which I would regard as inimical to the interests of the tribe, not merely from the point of view referred to in the preceding paragraph, but also from the economic point of view.

The Chief and tribe of the Bamangwato are in a state of dreadful poverty and I see little hope of improving their position, at least for a very long time to come.

I consider that every effort ought to be made by the Chief to encourage prospecting by individuals as it is more than likely that they would be successful in finding workable deposits of minerals. A number of them have stated that they know where such deposits are, but of course they would not disclose their information unless and until they were themselves authorized to work them.

Inasmuch as all pecuniary advantages from mining would go to the Chief and tribe, it is ridiculous to suggest that mining under the Proclamation of 1932 is otherwise than for the use and benefit of the tribe.

I have, &c.,
C. F. REY,
Resident Commissioner.

His Excellency
The High Commissioner,
Pretoria.

Serowe, Palapye Road, Bechuanaland Protectorate,
12th September, 1934.

YOUR EXCELLENCY,

As the British South Africa Company have abandoned their concession, I request you to take steps to have the Bamangwato Territory withdrawn from the operation of the Mines and Minerals proclamation of 1932.

The object of the late Chief Khama was to retain the Territory for the sole use of the tribe, and with the cancellation of the British South Africa Company's concession this object is now achieved.

I beg, &c.,
TSHEKEDI KHAMA.

To His Excellency
The High Commissioner,
Cape Town.

THE GOVERNMENT SECRETARY,

The Mines and Minerals Proclamation (No. 33 of 1932) was applied to the Bamangwato Reserve by High Commissioner's notice No. 112 of 1932, published in the *Gazette* of the 12th August, 1932, and by High Commissioner's notices Nos. 127 and 128 of 1932, published in the *Gazette* of the 23rd September, 1932, the Reserve was declared to be a Mining District with the person holding office as Resident Magistrate, Ngwato District, as Mining Commissioner.

2. No mining rights exist in the Reserve, and its withdrawal from the operation of the Mining Proclamation may be effected by the High Commissioner by notice published in the *Gazette*.

3. The effect of the continuance of the application of the Proclamation to the Reserve may briefly be summarized as follows:—

(1) Prospecting and mining within the Reserve may only take place subject to the provisions of the Proclamation, which it may rightly be asserted have, in the main, been devised for the benefit and in the interests of the natives themselves.

(2) Any prospecting by the natives themselves is kept under Government control, as seems only proper and necessary.

(3) No mining rights of any description may be granted without the consent of the Chief and tribe; consequently, there is no danger whatever of the tribe being disturbed in its sole use and peaceful occupation of the Reserve as a result of any prospecting or mining operations which may, as indicated, only take place with the Chief's and tribe's consent.

4. From the foregoing it will, I think, be seen that there is nothing to be gained by the Chief in withdrawing the Reserve from the operation of the Mining Proclamation, and I suggest his request for such withdrawal is probably actuated more from sentiment than anything else. On the other hand, paragraph 3 (2) above appears to supply a good reason why the Reserve should remain subject to the provisions of the Proclamation.

A. H. BARRATT,
Registrar of Deeds.

Mafeking, 28th September, 1934.

Enclosure 2 in No. 100.

(Bechuanaland Protectorate.)

(No. 2898.)

SIR, High Commissioner's Office, Pretoria, 27th October, 1934.

I have the honour to acknowledge the receipt of your despatch No. 7389 of the 9th October regarding the desire of Acting Chief Tshekedi that the Bamangwato Reserve should be withdrawn from the operation of the Mines and Minerals Proclamation No. 33 of 1932.

2. I referred your despatch and its enclosures to my Legal Adviser and I attach a copy of a Minute which he has furnished. You will observe that Sir Cecil Fforde is in entire agreement with the view expressed by the Registrar of Deeds and yourself that the rights of the Chief and tribe would be in no way prejudiced by the continuance of the application of the Proclamation to the Bamangwato Reserve, but that, on the contrary, there are definite advantages in allowing the Proclamation to remain in force in that area.

3. I am of the same opinion, and I enclose a letter to Tshekedi which, subject to any observations you may wish to offer, I should be obliged if you would cause to be forwarded to the Chief.

I have, &c.,
H. J. STANLEY,
High Commissioner.

His Honour
The Resident Commissioner
of the Bechuanaland Protectorate.

I am in entire agreement with the views expressed by the Resident Commissioner and the Registrar of Deeds. The Mining Law which is applied to the Bamangwato Reserve in no way infringes upon the rights or liberties of the Chief or of the tribe. Chief Tshekedi observes in his letter of the 12th September, 1934, that "the object of the late Chief Khama was to retain the Territory for the sole use of the tribe, and with the cancellation of the British South Africa Company's concession this object is now achieved." But he does not suggest in what way the Mines and Minerals Proclamation of 1932 prevents the tribe from using the Territory for their sole use. The Proclamation is in no way a derogation of tribal rights in the Territory, but, on the contrary, safeguards the Reserve from unregulated prospecting or mining. As the Registrar of Deeds has pointed out, mining rights cannot be granted without the consent of the Chief and the tribe, and if they are granted, it would be necessary to apply the Mining Law to the area in respect of which such a grant was made. If, on the other hand, the Chief and his tribe refuse to allow any mining in the Reserve, the Mining Law has nothing to operate upon, and consequently does not affect the Reserve in any way whatever. I think it might be pointed out to Tshekedi that it is in his own interests and the interests of his people that the Proclamation should be allowed to stand.

CECIL FFORDE,
24th October, 1934.

To the Acting Chief,
Tshekedi Khama.

High Commissioner's Office, Pretoria,
27th October, 1934.

MY FRIEND,

The Resident Commissioner has forwarded to me your letter of the 12th September in which you ask that steps should be taken to have the Bamangwato Reserve withdrawn from the operation of the Mines and Minerals Proclamation of 1932, in view of the abandonment by the British South Africa Company of their concession.

I have given careful consideration to your request, which I know was prompted by your desire to protect the interests of your people. But the Mining Law which is applied to the Bamangwato Reserve does not infringe in any way upon the rights or liberties of yourself or your people. In your letter you observe that "the object of the late Chief Khama was to retain the Territory for the sole use of the tribe, and with the cancellation of the British South Africa Company's concession this object is now achieved." But I fail to see in what way the Mines and Minerals Proclamation prevents your people from using the Reserve for their sole use. The Proclamation is in no way a derogation of tribal rights in the Reserve but, on the contrary, it safeguards your country from unregulated prospecting and mining. No mining rights in the Reserve can be granted without the consent of the Chief and the tribe; if they were granted, it would be necessary to apply the Mining Law to the area in respect of which such a grant was made.

If, on the other hand, you and your people refuse to allow any mining in the Reserve, the Mining Law will have nothing to operate upon, and consequently will not affect the Reserve except by affording protection against attempts at unauthorized mining operations. There are certain provisions in the Proclamation laying down the procedure to be followed before prospecting for and winning minerals can be undertaken, and without the protection which is afforded by the Mining Law there might well be a risk of unauthorized and uncontrolled prospecting and mining activities in your country which would not be covered by and could not be prevented without the safeguards contained in the Proclamation.

The continued application of the Mining Law to the Bamangwato Reserve seems to me, therefore, to be clearly in the interests of your people.

I am, &c.,
H. J. STANLEY,
High Commissioner.

20285/53.

No. 101.

DESPATCH

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 8th January, 1935.)

(Bechuanaland Protectorate.)

(No. 1053.) High Commissioner's Office, Cape Town,
15th December, 1934.

SIR,

With reference to my despatch No. 869 of the 27th October*, I have the honour to enclose, for your information, a copy of documents on the subject of the desire of Acting Chief Tshekedi that the Bamangwato Reserve should be withdrawn from the operation of the Bechuanaland Protectorate Mining Law.

I have, &c.,
H. J. STANLEY,
High Commissioner.

Enclosure 1 in No. 101.

(No. 7389.) Resident Commissioner's Office, Mafeking,
30th October, 1934.

SIR,

With reference to Your Excellency's despatch No. 2898 of the 27th October, regarding the desire of Acting Chief Tshekedi that the Bamangwato Reserve should be withdrawn from the operation of the Mines and Minerals Proclamation No. 33 of 1932, I have the honour to inform Your Excellency that I have no observations to offer in regard to the letter addressed by Your Excellency to Tshekedi, and I have accordingly forwarded it to the Resident Magistrate, Serowe, for transmission to the Chief.

I have, &c.,
C. F. REY,
Resident Commissioner.

His Excellency
The High Commissioner,
Pretoria.

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* No. 100.

Enclosure 2 in No. 101.

(No. 7389.) Resident Commissioner's Office, Mafeking,
SIR, 7th December, 1934.

With reference to my despatch No. 7389 of the 30th October, regarding the desire of Acting Chief Tshekedi that the Bamangwato Reserve should be withdrawn from the operation of the Mines and Minerals Proclamation No. 33 of 1932, I have the honour to forward herewith a letter from Tshekedi in reply to Your Excellency's letter to him dated the 27th October.

I would suggest that no answer appears to be required.

I have, &c.,
C. F. REY,
Resident Commissioner.

His Excellency
The High Commissioner,
Cape Town.

Serowe, Palapye Road, Bechuanaland Protectorate,
28th November, 1934.

To His Excellency
The High Commissioner
of the Bechuanaland Protectorate.

MY FRIEND,

With reference to Your Excellency's letter of 27th October, 1934, I thank Your Excellency for the assurance that the Mining Law does not infringe the rights and liberties of the Bamangwato people, and that no mining rights can be granted without the consent of the Chief and the tribe.

I did not fear unauthorized mining so much as authorized mining by reason of the fact that the Mining Law had been specially applied to the Bamangwato Territory. I hoped that as the British South Africa Company's concession had come to an end—*Gazette* Notice No. 112 dated 12th August, 1932—a notice which applies solely to the Bamangwato territory and published for the purpose of implementing the British South Africa Company's concession, would now be withdrawn in terms of section 6 (2) of the Mining Law.

With greetings,
I am, &c.,
TSHEKEDI KHAMA.

Enclosure 3 in No. 101.

(Bechuanaland Protectorate.)

(No. 3408.) High Commissioner's Office, Cape Town,
SIR, 15th December, 1934.

I have the honour to acknowledge the receipt of your despatch No. 7389 of the 7th December, transmitting the reply which has been received from Acting Chief Tshekedi to my letter to him of the 27th October regarding his desire that the Bamangwato Reserve should be withdrawn from the operation of the Bechuanaland Protectorate Mining Law.

2. I agree that the Chief's letter does not call for a reply.

I have, &c.,
H. J. STANLEY,
High Commissioner.

His Honour
The Resident Commissioner
of the Bechuanaland Protectorate.

BRITISH SOUTH AFRICA COMPANY

(1) Conversion of debentures of Railway Companies associated with the

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10305 B/2. No. 102.

BRITISH SOUTH AFRICA COMPANY

to

DOMINIONS OFFICE.

(Confidential.)

[*Answered by No. 105.*]

SIR, 2, London Wall Buildings, E.C.2, 1st July, 1935.

I am directed to request you to inform the Secretary of State for Dominion Affairs that my Directors have been for some time carefully considering the possibility of converting the debentures of the Railway Companies associated with the British South Africa Company into new debentures bearing a lower rate of interest.

It will probably be within the knowledge of the Secretary of State that, at the Railway Conference which took place at Cape Town and resulted in the Agreement dated 28th May, 1934, between the Governments of Southern and of Northern Rhodesia, the Administration of the Bechuanaland Protectorate and the representatives of the Railway Companies, the latter undertook that they would use their best efforts to effect such a conversion. They had naturally no hesitation in doing so since a diminution of the burden of debenture interest borne by the railways must obviously enure to the benefit alike of the users and of the owners of the railways.

Clause (1) of the Agreement of 28th May, 1934, accordingly reads as follows:—

> "As the primary purpose of this Conference is to devise means whereby overhead charges on the undertakings can be reduced, it is agreed between the Governments and the Railway Companies that if at the end of a period of five years from the date on which the Legislation contemplated herein shall have been enacted by each of the three Governments and shall have come into operation, the Companies have not to the satisfaction of the Governments converted the Debentures, the whole position shall be reconsidered with a view to further amendment of the Act."

In the early part of this year the conditions of the money market appeared to be very favourable for a conversion scheme of the nature contemplated in the foregoing; and the scheme which my Directors have in mind is one which, to put the effect of it as briefly as possible, would effect a saving of about £150,000 a year, thus *pro tanto* avoiding any increase of rates which, if feasible, might otherwise be necessary and accelerating the dates at which reductions of rates and payment of dividend might again become possible.

In considering this scheme my Directors have been confronted with a serious difficulty arising from the possible, though not admitted, existence of a right of expropriation of that section of the railway line which lies between Vryburg in the Union of South Africa and Palapye in the Bechuanaland Protectorate.

The whole line from Kimberley to the northern border of the Bechuanaland Protectorate was constructed and, as respects so much of it as lies north of Vryburg, is owned by the companies associated with the British South Africa Company. By arrangement with the Railway Administration of the Union of South Africa the line as far as Bulawayo in Southern Rhodesia is operated by that Administration on behalf of Rhodesia Railways Limited, which is now the owner of it.

A schedule is attached of the various agreements and legislative enactments under and by virtue of which the whole line above referred to was, section by section, constructed and running powers in respect of it were obtained.

The section from Kimberley to Vryburg was long ago purchased by the Government of the then Colony of the Cape of Good Hope, and no question now arises in regard to that section or in regard to the section north of Palapye in respect of which it is not suggested that any right of expropriation exists.

But in regard to the line from Vryburg to Palapye the case is different. In regard to this line, as one undivided whole, it has been suggested that a right of expropriation exists in virtue of Article 45 of the Agreement of the 3rd August, 1894, read with the supplementary agreement of 18th October, 1895, a right which, if it exists can probably

be exercised jointly or concurrently by the Government of the Union of South Africa and by the administration of the Bechuanaland Protectorate. The relevant agreements and other legal documents are in many respects obscure and difficult of interpretation, and my Directors are advised that there is considerable doubt whether the suggested right above referred to is now vested in anyone. But, while the point is by no means clear, my Directors are advised that they cannot so confidently rely upon it that no such right exists that they would be justified in proceeding on that basis in the matter of a debenture conversion which would involve the financial interests of other parties.

If the right exists and were exercised, the consequences to the railway undertaking would be very serious, for the right would be to expropriate the line at its original cost and, again to put the matter in the briefest possible form, the result would be a direct loss of net revenue to the Railway Company of about £150,000 a year, an amount equal to the saving promised by the projected debenture conversion scheme which would thus be rendered impossible.

It is, therefore, clear that it is very much to the interest, not only of the British South Africa Company and its associated Railway Companies, but also of the Governments and people of the two Rhodesias that the right of expropriation, if indeed it exists, should be got rid of. It is within the knowledge of my Directors that the Government of Southern Rhodesia concurs in this view: it can hardly be doubted that the Secretary of State for the Colonies will concur in it as respects Northern Rhodesia: and it is submitted that the interest of the Administration and people of the Bechuanaland Protectorate is the same.

As already stated, my Directors are advised that, if the right exists, it can probably be exercised jointly, or concurrently by the Government of the Union of South Africa and by the Administration of the Bechuanaland Protectorate.

They would, therefore, be most grateful if His Majesty's Government in the United Kingdom on behalf of the Administration of the Bechuanaland Protectorate would agree to a waiver during the life of the projected new railway debentures, a period estimated at about 44 years, of any right of expropriation of the line from Vryburg to Palapye that may exist in virtue of Article 45 of the Agreement of the 3rd August, 1894; and, since it is clearly right that the Government of the Union of South Africa should be consulted in the matter, if they would approach that Government with a view to securing their concurrence in such waiver.

I am, &c.,
G. C. CANDLER,
Assistant Secretary,
Secretarial Department.

Enclosure in No. 102.

SCHEDULE.

AGREEMENTS AND PROCLAMATIONS.

Date.	*Nature of Document.*	*Parties to Agreements or (in case of proclamations) Issuing Governments.*	*Section of railway referred to.*
29.10.89 ..	Agreement ..	B.S.A. Co. and Cape Colony Government.	Kimberley-Vryburg.
23.1.90 ..	Agreement ..	B.S.A. Co. and Cape Colony Government.	Kimberley-Vryburg.
23.1.90 ..	Agreement ..	B.S.A. Co. and British Bechuanaland Government.	S. Border to N. Border British Bechuanaland.
1892 ..	Proc. No. 151	British Bechuanaland Government	S. Border to N. Border British Bechuanaland.
4.8.93 ..	Agreement ..	B.S.A. Co. and Rhodesia Railways	Palapye to N. Border Bechuanaland Protectorate.
3.8.94 ..	Agreement ..	B.S.A. Co. and British Bechuanaland Government.	Vryburg-Palapye.
1894 ..	Proc. No. 199	British Bechuanaland Government	Vryburg-Mafeking.
1895 ..	Proc. No. 227	British Bechuanaland Government	Mafeking-N. Border British Bechuanaland.
1895 ..	Proc. No. 288	British Bechuanaland Government	Vryburg-Mafeking.
1896 ..	Proc. No. 25	Bechuanaland Protectorate Government.	S. Border Bechuanaland Protectorate-Palapye.
1898 ..	Proc. No. 4	Bechuanaland Protectorate Government.	Palapye to N. Border Bechuanaland Protectorate.

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(2) Surrender by the British South Africa Company of preferential rights in mineral concessions in the Bechuanaland Protectorate

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10305 B/2. No. 103.

BRITISH SOUTH AFRICA COMPANY

to

DOMINIONS OFFICE.

[*Answered by No. 105.*]

(Confidential.)

SIR, 2, London Wall Buildings, E.C.2, 1st July, 1935.

I am directed to state that, in consideration of the waiver suggested in the last paragraph of my letter of even date* regarding the proposed conversion of the debentures of the Railway Companies associated with the British South Africa Company, my Directors would be willing to surrender the preferential right which, in virtue of the assurances given to the British South Africa Company by the Secretary of State's predecessors, the Company enjoys to take up any concessions of mineral or land rights in the Bechuanaland Protectorate which the Crown, within the areas of the Crown lands, or the native chiefs with the consent of the Crown, within the areas of the native reserves, may be disposed to grant. Thus the hands of the Crown, and of the native chiefs so far as the Crown may allow, would be set free as respects such concessions.

I am, &c.,
G. C. CANDLER,
Assistant Secretary, Secretarial Department.

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(3) Waiver by the Bechuanaland Administration of right of expropriation of railway line from Vryburg to Palapye

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10305 B/2. No. 104.

DESPATCH

to

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

[*Answered by No. 107.*]

(Bechuanaland.)

(No. 318, confidential.)

SIR, Downing Street, S.W.1, 6th July, 1935.

I have the honour to transmit a copy of a letter† from the British South Africa Company regarding their desire, in connexion with the proposal for the conversion of the debentures of the Rhodesia Railway Companies, to obtain a waiver, during the life of the projected new debentures, of any right of expropriation of the line from Vryburg to Palapye that may exist in virtue of Article 45 of the Agreement of the 3rd August, 1894. A copy of a further letter‡ from the Company stating that in consideration of such waiver, the Directors would be willing to surrender the preferential rights which the Company enjoys in the Bechuanaland Protectorate, is also enclosed.

2. The matter has formed the subject of discussion with Mr. Huggins and with the Directors, of which you have been informed, and I understand that you are prepared, so far as the Bechuanaland Protectorate is concerned, to accept the proposal that any right of expropriation that may exist under Article 45 of the Agreement of the 3rd August, 1894, should be waived during the life of the new debentures. You will observe that it

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* No. 102. † No. 102. ‡ No. 103.

is not proposed to modify in any way the terms of Article 43 of the Agreement under which there is a right of expropriation if the Railway Company shall fail to keep open and work the railway to the reasonable satisfaction of the Government.

3. I should be glad, in the circumstances, if you would consult His Majesty's Government in the Union on the subject, explaining that His Majesty's Government in the United Kingdom are for their part prepared to accept the Company's proposal and hope that the Union Government will also be able to agree.

I have, &c.,

J. H. THOMAS.

10305 B/2. No. 105.

DOMINIONS OFFICE

to

BRITISH SOUTH AFRICA COMPANY.

(Confidential.)

SIR, Downing Street, S.W.1, 6th July, 1935.

I am directed by Mr. Secretary Thomas to acknowledge the receipt of your letter of the 1st July* regarding the desire of your Directors to obtain a waiver, during the life of the projected new debentures of the Rhodesian Railway Companies, of any right of expropriation of the line from Vryburg to Palapye that may exist in virtue of Article 45 of the Agreement of the 3rd August, 1894. I am to acknowledge also the receipt of your separate letter† of the same date stating that in consideration of such waiver your Directors would be willing to surrender the preferential rights which the Company enjoy in the Bechuanaland Protectorate.

2. Mr. Thomas is asking the High Commissioner for Basutoland, the Bechuanaland Protectorate, and Swaziland to consult His Majesty's Government in the Union of South Africa on the subject, and a further letter will be addressed to you when the views of the Union Government have been obtained.

I am, &c.,

H. N. TAIT.

10305 B/2. No. 106.

SIR EDWARD HARDING (DOMINIONS OFFICE)

to

SIR WILLIAM CLARK (HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND).

(Confidential.)

MY DEAR CLARK, Downing Street, S.W.1, 6th July, 1935.

An official despatch‡ is going to you by this air mail enclosing copies of letters from the British South Africa Company regarding the question of the proposed waiver of the right of expropriation over the railway from Vryburg to Palapye. You will see that the Company have offered, as a consideration for such waiver, to surrender their preferential rights in the Bechuanaland Protectorate, and if the Company's scheme goes through the arrangement will I think be a very satisfactory one from the point of view of the Protectorate.

In this connexion I may explain that, after receipt of Stanley's letter of the 14th November§ regarding the Company's preferential rights, we thought it desirable to consult the Law Officers and I enclose a copy of our reference to them‖ and of the report just received¶. I explained to D. O. Malcolm after receiving your telegram of the 26th June** that we had now obtained advice to the effect that the Company's latest claims were unfounded, and Malcolm agreed that it was unnecessary to carry the matter further at present in view of their offer to abandon these rights entirely.

* No. 102. † No. 103. ‡ No. 104. § No. 10141/218: not printed. ‖ No. 137.
¶ No. 138. ** No. 10305 B/1: not printed.

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You will appreciate of course that, even if the Union Government are prepared to accept the Company's proposal, the whole arrangement is dependent upon the Company being able to carry through the conversion scheme. They think that a suitable moment for this may occur in the autumn, and they are naturally anxious that the views of the Union Government may be obtained as soon as possible. I understand from Malcolm that he thinks that the Union Government will probably ask, as a condition to their assent to the desired waiver, that the Company will agree to sell them the line from Vryburg to Mafeking. (You will remember that this point is referred to in the note of the talk with Mr. Huggins enclosed in my letter of the 6th June*.) If so the Company will, I gather, be prepared to agree but, naturally, the Company do not want to raise this point themselves, nor, of course, would it be desirable that you should mention it when communicating with the Union Government. If it is raised by the Union Government the negotiations on this point would presumably have to be conducted between the Company (or the representative of the Railways in Southern Rhodesia) and the Union Government direct.

Though the Company have put their offer to surrender their preferential rights in a separate letter, the point is of interest to the Union Government in view of their expectations in regard to the Bechuanaland Protectorate, and the proper course seems to be that you should communicate copies of both letters to them. I imagine that it is not very likely that the Union Government will raise the point about Article 35 of the Agreement which is referred to in the note of the talk with Huggins, and also in our telegram of the 24th June†, but if they do you might explain that we considered this question very carefully, but that it was felt that in view of the railway legislation which now exists in the Rhodesias and the Bechuanaland Protectorate for the control of railway rates and dividends, it was not necessary to require any modification of Article 35, more especially as any alteration of this Article, if it were to involve a diminution of the protection accorded to the Company, would prejudice the carrying out of the conversion scheme which will in any case be a big and difficult operation.

If practicable it would be convenient if you could let us know by telegraph the response of the Union Government to the Company's proposal.

I am sending Stanley confidentially copies of both the letters from the Company and I have also sent Huggins a copy of the first one, but not the one about the preferential rights, which seems of no special interest, in this connexion, to the Southern Rhodesia Government.

I am, &c.,

E. J. HARDING.

10305 B/6. No. 107.

DESPATCH

from

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received 24th October, 1935.)

[*Answered by No. 109.*]

(Bechuanaland.)

(No. 589, confidential.)

SIR, High Commissioner's Office, Pretoria, 15th October, 1935.

With reference to my confidential telegram No. 172 of the 14th October‡, and your despatch confidential No. 318 of the 6th July§, I have the honour to enclose herewith a copy of a letter which in accordance with your instructions I caused to be addressed to the Union Department of External Affairs relative to the desire of the British South Africa Company, in connexion with the proposal for the conversion of the debentures of the Rhodesia Railway Companies, to obtain a waiver, during the life of the projected new debentures, of any right of expropriation of the line from Vryburg

* No. 10305/305: not printed. † No. 10305/306: not printed. ‡ No. 10305 B/3: not printed.
§ No. 104.

to Palapye that may exist in virtue of Article 45 of the Agreement of the 3rd August, 1894. I also enclose a copy of a reply which has now been received stating that His Majesty's Government in the Union of South Africa are not prepared to surrender their rights in respect of the line referred to.

I have, &c.,
W. H. CLARK,
High Commissioner.

Enclosure 1 in No. 107.

(No. 2056, confidential.)

SIR, High Commissioner's Office, Pretoria, 23rd July, 1935.

I am directed by the High Commissioner to transmit herewith a copy of a letter from the British South Africa Company, which has been communicated to His Excellency by the Secretary of State, relative to the desire of the Company, in connexion with a proposal for the conversion of the debentures of the Rhodesia Railway Companies, to obtain a waiver, during the life of the projected new debentures, of any right of expropriation of the line from Vryburg to Palapye that may exist in virtue of Article 45 of the Agreement of the 3rd August, 1894, entered into between the High Commissioner as Governor of British Bechuanaland, the British South Africa Company, and the Bechuanaland Railway Company (see the Schedule to the High Commissioner's Proclamation No. 227 B.B. dated the 21st October, 1895).

2. You will observe that the proposals only affect any right of expropriation that may exist under Article 45 of the Agreement and that it is not proposed to modify in any way the terms of article 43 under which there is a right of expropriation if the Railway Company shall fail to keep open and work the railway to the reasonable satisfaction of the Government.

3. The British South Africa Company have also, in a further letter of which a copy is enclosed*, intimated that, in consideration of the grant of the proposed waiver, the Company would be prepared to surrender certain preferential rights which they enjoy in regard to the taking up of mineral and land concessions in the Bechuanaland Protectorate.

4. The Company's suggestions, in so far as they concern the interests of the Bechuanaland Protectorate, have been carefully considered by His Majesty's Government in the United Kingdom, in consultation with the High Commissioner, and His Excellency is authorized to state that his Government are for their part prepared to accept the Company's proposal.

5. I am accordingly to request that the matter may be submitted for the favourable consideration of His Majesty's Government in the Union. I gather that a suitable opportunity for carrying out the Company's conversion proposals is likely to arise in the near future, and they are therefore anxious to obtain the views of His Majesty's Government in the Union as soon as possible though it will of course be appreciated that even if your Government should be prepared to accept the Company's proposal the whole arrangement must be dependent upon the Company being able to carry through the conversion scheme. An early reply to this letter would accordingly be much appreciated.

I have &c.,
H. E. PRIESTMAN,
Administrative Secretary to
the High Commissioner.

The Secretary for External Affairs,
Pretoria.

Enclosure 2 in No. 107.

(Confidential.)

SIR, Department of External Affairs, Pretoria, 10th October, 1935.

Referring to your confidential letter No. 2056 of the 23rd July, 1935, covering a copy of a letter from the British South Africa Company relative to the desire of that Company to obtain a waiver of any right of expropriation of the line from Vryburg to Palapye, I have the honour to state that the South African Railways and Harbours

* 10305/2: not printed.

Administration's position in regard to competitive traffic for Rhodesia was examined in 1914. As a result of that examination it was disclosed that the interests of the Union of South Africa were adversely affected by a reduction in the rates over the Mashonaland railways, which connect the Port of Beira with the Rhodesian hinterland.

A report on the position was submitted to the then Minister of South African Railways, who communicated to the Directorate of the Rhodesian Railway interests the suggestion that the Union's competitive position should be maintained by a corresponding reduction of tariffs on the lines connected with the South African Railways and serving Rhodesia from the South. The reply was a frank avowal of the companies' intention to make Beira the chief port for Rhodesia, on the grounds that the companies had complete control of the connecting railways and that the geographical relationship of the port justified such action.

Arising out of this, the Administration considered the question of expropriating that portion of the Rhodesian Railways line, viz., the section Vryburg to Ramathlabama, which lies in Union territory.

The Company on legal advice obtained by them contended:—

(*a*) The Union Government are not the Successors to the High Commissioner, who, as Governor of British Bechuanaland, entered into the 1894 agreement; and

(*b*) that, even if the Union Government did possess rights of expropriation, those rights can be exercised only in respect of the whole section of line from Vryburg to Palapye Road, and not only to that portion of the Rhodesia Railways which runs within Union territory, viz., from Vryburg to Ramathlabama.

Legal opinion obtained by the Administration is to the effect that Act 41 of 1895 (Cape) provides that the Governor of the Cape Colony should be deemed to be referred to in the place of the Governor of British Bechuanaland in any law which, after the annexation of Bechuanaland, continued to be in force in that territory.

Proclamation 227 B.B. which confirmed the 1894 and 1895 Agreements which governed the construction and ownership of the railway line from Vryburg to Palapye, continued to have force and effect subject to the conditions of Clause 21 of the Act of Annexation which relieved the Cape Government of any obligation in respect of the subsidies on the extension of the railway from Mafeking.

The rights of the Cape Government passed to the Union Government by virtue of Section 22 of the South Africa Act.

The legal opinion furnished to the Administration is at one with that furnished to the Company in the fact that the right of expropriation applies to the whole section between Vryburg and Palapye and that it could not be exercised in respect of the section which lies within Union territory, viz., Vryburg-Ramathlabama.

In view of the legal opinion obtained, the Administration conducted negotiations intermittently up to 1926 to purchase the section situate in Union territory, but these negotiations failed because of the Rhodesian Railways' insistence on fixing the purchase price at the capitalized value of the nett earnings over a period when traffic was abnormal and when, moreover, a surcharge on the rates was in operation.

The Vryburg-Mafeking section of the Rhodesian Railways has by agreement been treated as an integral portion of the South African Railways for traffic between South African Railway stations conveyed via the Rhodesian Railways, and South African Railways rates and conditions apply over this section. Local rates, are, however, applicable to traffic emanating on the line. The South African Railways have no control of the rating applied to this traffic, and circumstances may arise which would create the unsatisfactory state of affairs often inseparable from the control by private concern whose interests may clash with Government policy, of an important section of railway line sandwiched between Government lines.

The difficulties which would be experienced in the event of a change in the working control, would be accentuated by the fact that Mafeking is important to the Union as the junction for Reef-Rhodesia and Rhodesia-Reef traffic, and also Western Transvaal traffic from and to the Cape Western stations.

Viewing the request from the financial standpoint, it is observed that in a letter addressed to the Bechuanaland Administration, the Secretary on behalf of the Company undertakes to forego preferential rights his Company possesses to mineral-bearing ground in the Protectorate. It is submitted that the Union's interest in the expropriation right is far more valuable than that of Bechuanaland, yet no *quid pro quo* is offered. Even if a consideration were offered it would be unwise to depart from the principle of expropriation which is a feature of all legislation promulgated in the Union to authorize

the construction and operation of railways by private concerns. The necessity for such a reservation in a country where railway transportation is mainly the function of the Government, is obvious and needs no elaboration. Other companies, whose lines are connected to South African Railway lines are subject to the restriction and it would be invidious to extend greater facilities to non-resident companies than are allowed to those companies whose finances are invested in the development of Union industries.

Having regard to the foregoing neither the South African Railway Administration nor the users of the section who are Union Nationals, could face with equanimity the termination of the working agreement, and His Majesty's Government in the Union feel that there can be no question of their surrendering their rights in respect of the line referred to.

I have, &c.,
P. R. BOTHA,
For Secretary for External Affairs.

The Administrative Secretary to the
High Commissioner,
10, Bryntirion,
Pretoria.

10305 B/8. No. 108.

BRITISH SOUTH AFRICA COMPANY

to

DOMINIONS OFFICE.

[*Answered by No. 110.*]

SIR, 2, London Wall Buildings, E.C.2, 7th November, 1935.

With reference to the letter of the 10th October* from the Secretary for External Affairs of the Government of the Union of South Africa to the Secretary to the High Commissioner for the Bechuanaland Protectorate, a copy of which has been furnished to my Directors through the courtesy of the Dominions Office, I am directed to enquire whether the Secretary of State for Dominion Affairs would be good enough to cause the Government of the Union of South Africa to be asked whether they would be willing to allow Mr. Chapman, the Resident Director of the Rhodesia Railways Limited, whose office is in Bulawayo, to visit them for the purpose of endeavouring to arrive by agreement with them at an arrangement under which they might be able to see their way to agree to the waiver, which formed the subject of my letter to you on the 1st July†, of any right of expropriation that may exist in respect of the line of railway from Vryburg to Palapye. For this purpose personal discussion is evidently necessary, and my Directors would be very glad to learn that the Government of the Union of South Africa were willing to receive a visit from Mr. Chapman.

I am, &c.,
PERCY J. BAIRD,
Secretary.

10305 B/8. No. 109.

TELEGRAM

to

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Sent 4 p.m., 14th November, 1935.)

No. 165. Confidential. Your despatch 15th October, No. 589‡. British South Africa Company request that Union Government may be asked whether they would be willing to allow Chapman, Resident Director of Rhodesia Railways, to visit them for the purpose of endeavouring to arrive by agreement at arrangement under which they might be able to see their way to agree to proposed waiver. Should be glad if you would convey request to Union Government and report reply by telegram.

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* No. 10305 B/6; not printed. † No. 103. ‡ No. 107.

70

10305 B/8. No. 110.

DOMINIONS OFFICE

to

BRITISH SOUTH AFRICA COMPANY.

SIR, Downing Street, S.W.1, 18th November, 1935.

I am directed by Mr. Secretary Thomas to acknowledge the receipt of your letter of the 7th November* and to state that the High Commissioner for Basutoland, the Bechuanaland Protectorate and Swaziland has been requested by telegram to ask the Union Government whether they would be prepared to receive a visit from Mr. Chapman for the purpose of endeavouring to arrive at an arrangement under which they might be able to see their way to agree to the waiver of any right of expropriation that may exist in respect of the line of railway from Vryburg to Palapye.

A further communication will be addressed to you when the views of the Union Government have been ascertained.

I am, &c.,
H. N. TAIT.

10305 B/10. No. 111.

DOMINIONS OFFICE

to

BRITISH SOUTH AFRICA COMPANY.

SIR, Downing Street, S.W.1, 5th December, 1935.

With reference to my letter of the 18th November†, I am directed by Mr. Secretary MacDonald to request you to inform your Directors that a telegram has now been received from the High Commissioner for Basutoland, the Bechuanaland Protectorate and Swaziland stating that the Union Government have no objection to Mr. Chapman visiting them for the purpose of discussing the question of the proposed waiver of any right of expropriation that may exist in respect of the line of railway from Vryburg to Palapye. The High Commissioner adds that Mr. Chapman has been so informed.

I am, &c.,
H. N. TAIT.

10305 B/40. No. 112.

DESPATCH

from

SOUTHERN RHODESIA GOVERNMENT.

(Received 20th November, 1936.)

(No. 451. confidential.)

SIR, Salisbury, Southern Rhodesia, 10th November, 1936.

I enclose, at my Prime Minister's request, a copy of an Agreement initialled by Captain Senior on behalf of this Government at Pretoria, also a copy of a letter written by Mr. Pirow in elaboration of Clause 3. Mr. Huggins understands that Clause 3 has been put in very largely by Mr. Pirow for political reasons, as he has got to show his people that they have benefited by the Agreement, and my Ministers do not anticipate any difficulty in working it. You will notice that it is only in connexion with imports and we are left free to the development of Beira for export trade as much as we like. Also, in fact, the ratio of the Beira-Vryburg section and the Beira-Bulawayo section have always in the past been moved up or down in the same ratio, so there is really nothing new in that.

2. Sir Hubert Young was informed of the earlier negotiations in connexion with this Agreement, and so was the High Commissioner for Basutoland, the Bechuanaland

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* No. 108. † No. 110.

Protectorate and Swaziland, and this morning Major Cloete left by air to try and catch Sir Hubert Young before he left Lusaka to put these papers in his hands. But I am informed that he was too late to effect his purpose.

3. Of course all three Governments are vitally interested in this Agreement, but for the purpose of speed Mr. Huggins considered it better to act as he has done to enable the debentures to be converted before the price of money is increased.

4. My Ministers anticipate from this Agreement the probability of converting the debentures and saving £150,000 per annum, and then, with the sinking fund being provided from the renewals and depreciation account, gradually to extinguish debentures, thus putting the Railway system on a thoroughly sound footing.

5. The reason why the renewals and depreciation account can be used for the sinking fund is that in the past it has been about twice the size it should be, because it was regarded as the debenture holders' only security; so it is quite legitimate to use some of it for cancelling debentures.

6. Mr. Huggins thinks that, in view of the new contracts made by the Railway Companies with the Northern Rhodesia Copper Fields, we can look forward, at a fairly early date, to some reduction of railway rates over the whole system.

7. His Majesty's Government in the United Kingdom are interested in sub-section (*b*) of Clause (1), but Mr. Huggins considers that whatever they decide to do about that would make no difference to the Agreement.

8. Mr. Huggins, however, states that in connexion with sub-section (*b*) of Clause (1) this Government is writing to ask the Union Government if they would agree to an alteration in the wording, and make it clear that their option is recognized but not their sole right to purchase. They may not agree to it, in which case my Ministers would accept the initialled Agreement.

I have, &c.,

A. F. RUSSELL,

Acting Governor.

Enclosure 1 in No. 112.

AGREEMENT entered into between THE MASHONALAND RAILWAY COMPANY LIMITED, and THE RHODESIA RAILWAYS, LIMITED, their successors in title or assigns, hereinafter referred to as " the party of the first part " and herein represented by HENRY CHAPMAN in his capacity of Resident Director and General Manager of the said Railway Companies, the GOVERNMENT OF SOUTHERN RHODESIA, hereinafter referred to as " the party of the second part " and herein represented by CAPTAIN THE HONOURABLE W. S. SENIOR in his capacity of Minister of Mines and Works, and the GOVERNMENT OF THE UNION OF SOUTH AFRICA in its Administration of Railways and Harbours, hereinafter referred to as " the party of the third part ", and herein represented by the HONOURABLE OSWALD PIROW, K.C., M.P., in his capacity of Minister of Railways and Harbours.

WHEREAS the party of the third part claims, under the contract entered into on the 3rd August, 1894, between the Crown Agents for the Colonies acting on behalf of Her Majesty's High Commissioner and Governor of British Bechuanaland, the British South Africa Company, and the Bechuanaland Railway Company, that in terms of Clause 45 of the said contract there exists a right to purchase the section of line from Vryburg in the Union of South Africa to Palapye in the territory of the Bechuanaland Protectorate, and whereas this claim is disputed by the party of the first part, and

WHEREAS the party of the third part is desirous that this right of purchase shall be definitely and formally admitted by the party of the first part, and

WHEREAS the party of the first part is desirous that the right in question of the party of the third part shall not be exercised for a period of 33⅓ (thirty-three and one-third) years, and

WHEREAS the party of the third part is desirous that for a period of 33⅓ (thirty-three and one-third) years the import traffic from Union Ports and Union Port Towns conveyed over the lines of the party of the first part shall as far as practicable be maintained at its present proportion of the total import traffic conveyed over the lines of the party of the first part, and

WHEREAS the party of the third part is desirous of having fixed for the section of the Rhodesia Railways situated between Vryburg (inclusive) and Ramathlabama (inclusive) in respect of purely local traffic conveyed between those two points, the same classification of railway rates and fares as is from time to time applicable to traffic on the South African Railways.

NOW THEREFORE these presents witness that the aforesaid parties have agreed and contracted with each other as follows:—

(1) (*a*) The parties of the first and second parts hereby unreservedly agree and admit that the right to purchase the line from Vryburg in the Union of South Africa to Palapye in the territory of the Bechuanaland Protectorate exists and that the terms and conditions governing the purchase price of the line are as set out in the contract dated the 3rd August, 1894, between the Crown Agents for the Colonies acting on behalf of Her Majesty's High Commissioner and Governor of British Bechuanaland, the British South Africa Company and the Bechuanaland Railway Company as aforementioned in the preamble hereof.

(*b*) Subject to the consent of His Majesty's Government in the United Kingdom and Northern Ireland the parties of the first and second parts agree that the party of the third part has the sole right to purchase the line from Vryburg to Palapye.

(2) The party of the third part hereby binds itself not to exercise for a period of 33⅓ (thirty-three and one-third) years reckoned from the date of the signing of this Agreement the right of purchase set out under (1) hereof.

(3) The parties of the first and second parts hereby bind themselves for a period of 33⅓ (thirty-three and one-third) years reckoned from the date of the signing of this Agreement not to take or initiate any action which may directly or indirectly divert import traffic from Union Ports or Union Port Towns to the Port of Beira.

(4) In particular but without derogating from the generality of the obligations set out under (3) hereof, the party of the first part undertakes that unless otherwise mutually agreed upon between the Administrations of the Mashonaland and Rhodesia Railways and the South African Railways and Harbours, no increase will be made in the existing rates preferences at Bulawayo in favour of Beira over the Union Ports and Port Towns as shown hereunder in respect of traffic consigned to Bulawayo and places north thereof in the direction of the Congo:—

Beira Preference per 100 lb. at Bulawayo.

From	*Rates.*									
	1	2	3	4	5	6	7	8	9	10
Table Bay, Cape Town and Mossel Bay ..	73*d.*	81*d.*	50*d.*	40*d.*	39*d.*	36*d.*	34*d.*	35*d.*	34*d.*	33*d.*
Algoa Bay, Port Elizabeth, Buffalo Harbour, East London, Point, and Durban	42*d.*	36*d.*	30*d.*	23*d.*	24*d.*	22*d.*	22*d.*	24*d.*	27*d.*	26*d.*

(5) The party of the first part hereby agrees that passengers and all descriptions of traffic transported locally from points on the Vryburg (inclusive)—Ramathlabama (inclusive) section to points on the same section, shall be charged at South African Railway tariffs, that is to say the section shall, for railway tariff purposes be treated as though it formed part of the South African Railways System.

(6) In the event of the liquidation of the Mashonaland Railway Company, Limited, and the transfer of its undertaking to the Rhodesia Railways Limited, the latter Company undertakes to assume all the rights and obligations under this Agreement.

Signed by ..... at.....
on the.....day of.....1936.
WITNESSES:
(1).....
(2).....

Signed by ..... at.....
on the..... day of.....1936.
WITNESSES:
(1).....
(2).....

Signed by ..... at.....
on the..... day of.....1936.
WITNESSES:
(1).....
(2).....

Enclosure 2 in No. 112.

Office of the Minister of Railways and Harbours
and of the Railway Board,
Union Buildings, Pretoria, 7th November, 1936.

DEAR CAPTAIN SENIOR,

With reference to the provisions of Clause 3 of the Agreement it is to be clearly understood that they shall not be so construed as to prevent your Government from obtaining lower shipping rates in respect of import traffic through the port of Beira. In fact my Government will be only too pleased to assist you in your efforts in this connexion.

It is agreed, however, that if such reduction in shipping rates should result in the Union's proportion of import traffic into Rhodesia being diminished contrary to the intention of the Agreement, your Government will be prepared to agree to such rearrangement of traffic as will compensate the Union for any such loss.

Yours, &c.,

O. PIROW.

Capt., the Hon. W. S. Senior,
Minister of Mines and Works,
Salisbury.

10305 B/44.

No. 113.

DOMINIONS OFFICE

to

BRITISH SOUTH AFRICA COMPANY.

[*Answered by No. 114.*]

SIR, Downing Street, S.W.1, 17th December, 1936.

I am directed by Mr. Secretary MacDonald to request you to inform your Directors that he has had under consideration the terms of Clause 1(*b*) of the Agreement* between the Mashonaland and Rhodesia Railway Companies, and the Governments of the Union of South Africa and of Southern Rhodesia which was recently initialled at Pretoria.

2. His Majesty's Government in the United Kingdom feel that as under the Agreement the option to purchase the line from Vryburg to Palapye is not exercisable until a period of thirty-three and one-third years has expired it is hardly necessary and indeed it would not be possible for them to bind themselves now to a definite course on the expiry of that period. His Majesty's Government in the Union have however been informed that His Majesty's Government in the United Kingdom will gladly undertake to maintain contact with them on this question and will give careful consideration to such proposals as the Union Government may wish in due course to make.

3. In the circumstances it is now proposed that the matter should be settled on the following basis:—

(*a*) The British South African Company and the Mashonaland and Rhodesia Railway Companies agree and admit that the right to purchase the line from Vryburg in the Union of South Africa to Palapye in the territory of the Bechuanaland Protectorate exists and that the terms and conditions governing the purchase price of the line are set out in Clause 45 of the contract dated the 3rd August, 1894, between the Crown Agents for the Colonies acting on behalf of Her Majesty's High Commissioner and Governor of British Bechuanaland, the British South Africa Company and the Bechuanaland Railway Company.

(*b*) The Secretary of State agrees, on behalf of the Bechuanaland Protectorate Administration, not to exercise for a period of thirty-three and one-third years, reckoned from the date of the signing of the Agreement referred to in the first paragraph of this letter†, the right of purchase set out under (*a*) above.

(*c*) As from the date referred to in (*b*) above the British South Africa Company agree to surrender for all time the preferential right which in virtue of previous assurances the Company enjoy to take up any concessions of mineral or land rights in the Bechuanaland Protectorate which the Crown, within the areas of the Crown lands, or the Native Chiefs with the consent of the Crown, within the areas of the Native Reserves, may be disposed to grant.

4. I am to enquire whether your Directors and the Railway Companies associated with your Company accept the terms of paragraph 3 of this letter.

I am, &c.,

H. N. TAIT.

10305 B/47.

No. 114.

BRITISH SOUTH AFRICA COMPANY

to

DOMINIONS OFFICE.

SIR, 2, London Wall Buildings, E.C.2, 18th December, 1936.

I am instructed by my Directors to acknowledge the receipt of your letter of the 17th December, 1936‡.

They note the contents of the second paragraph of your letter, and desire me to inform you that on behalf of the British South Africa Company itself and of the Railway Companies associated with it they accept the proposals set out in the third paragraph thereof.

I am, &c.,

PERCY J. BAIRD,

Secretary.

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* Enclosure 1 in No. 112. † The date of signature of the Agreement was the 12th January, 1937.

‡ No. 113.

EXCHANGE OF LAND FOR EUROPEAN OCCUPATION IN BRITISH BECHUANALAND

21133/1.

No. 115.

TELEGRAM

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 6.40 p.m., 11th April, 1934.)

[*Answered by No. 117.*]

No. 47 Confidential. 11th April. With reference to the communication from His Majesty's Government in the Union which te Water has been instructed to convey to you on the question of the utilization, for European occupation, of half of certain irrigable land forming part of Native Reserves in British Bechuanaland subject to exemption of the other half from charge for use of water and to compensatory grant to natives of land adjoining reserves, you will doubtless not omit to consider (1) the possibility that, after transfer of High Commission Territories, your acquiescence might eventually be used as a precedent if they should hereafter be transferred to the Union and, (2) probable immediate psychological effect on natives in territories. In this connexion I would refer you to Just's private letter to Lord Gladstone dated 14th February, 1913.

So far as I am able to form an opinion the proposal in this particular instance does not seem unreasonable in itself and though I am somewhat anxious on the two grounds stated above I am doubtful whether resistance to it will be practicable. In any case I trust that you will not think it necessary to accept suggestion that you should express yourself on behalf of United Kingdom Government as feeling no longer concerned. It seems important that any assurance morally binding on the Union Government with regard to Native Reserves should not be allowed to lapse because if the transfer of the High Commission Territories should come about assurances of this kind would presumably be only effective safeguard obtainable.

21133/2.

No. 116.

MR. C. T. TE WATER (HIGH COMMISSIONER FOR THE UNION OF SOUTH AFRICA),

to

MR. J. H. THOMAS (SECRETARY OF STATE FOR DOMINION AFFAIRS).

[*Answered by No. 119.*]

South Africa House, Trafalgar Square,

DEAR MR. THOMAS, London, W.C.2, 11th April, 1934.

As you will be aware, prior to the enactment by the Cape Government of the Bechuanaland Annexation Act in 1895, an assurance was given by that Government to the Imperial Government that no legislation would be introduced for altering existing arrangements in British Bechuanaland, without previously ascertaining the views of His Majesty's Government in the United Kingdom.

Among these arrangements was that of land in Native Reserves.

The Union Government are now undertaking the Vaal-Hartz Irrigation Scheme, which would place some 16,000 morgen of land in the Taungs Native Reserve under irrigation, and as the natives could not economically make use of so large an area, negotiations were entered into with a view to obtaining an agreement for the excision from the Reserve of approximately half the above area, on condition that the natives receive, in exchange, land adjoining the present limits of the Reserve.

This land will at least be equal in value to the land surrendered by the natives.

In addition, the natives will receive water for the balance of the irrigable area free of charge in return for the supply of free labour for the maintenance work traversing their land.

The Union Government state that the Chief and his Counsellors have accepted the principle of an exchange, provided the land offered is suitable.

I am accordingly directed to bring the foregoing arrangement to your notice, and to inquire if His Majesty's Government in the United Kingdom still consider themselves concerned in the matter, and in that event whether they have any observations to offer.

It will be appreciated if you will be so good as to let me have a reply at your early convenience, in order that I may be enabled to telegraph my Government as early as possible.

Yours, &c.,
C. T. TE WATER.

21133/1. No. 117.

TELEGRAM

to

HIGH COMMISSIONER, SOUTH AFRICA.

(Sent 10 p.m., 30th April, 1934.)

[*Answered by No. 118.*]

No. 43. Secret. Reference your confidential telegram No. 47 of the 11th April*. In all the circumstances I propose in replying to te Water's letter† to say that I note that the proposed exchange of land is acceptable to the natives concerned provided that the land offered in exchange is suitable and that I do not wish in these circumstances to make any observations in the present case. Should be glad to know whether you concur in terms of proposed answer.

21133/3. No. 118.

TELEGRAM

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 2.29 p.m., 1st May, 1934.)

No. 65. Secret. 1st May. I concur in the answer proposed in your telegram No. 43 of the 30th April Secret‡.

21133/3. No. 119.

MR. J. H. THOMAS (SECRETARY OF STATE FOR DOMINION AFFAIRS)

to

MR. C. T. TE WATER (HIGH COMMISSIONER FOR THE UNION OF SOUTH AFRICA)

DEAR MR. TE WATER, Downing Street, S.W.1, 3rd May, 1934.

Thank you for your letter of the 11th April§ in which you let me know that the Union Government contemplate the excision from the Taungs Native Reserve in British Bechuanaland of part of an area which it is proposed to irrigate, and to give to the natives concerned, in exchange, land adjoining the present limits of the Reserve, which would be at least equal in value to the land surrendered by the natives.

I note that the principle of the proposed exchange is acceptable to the natives, provided that the land offered in exchange is suitable, and in these circumstances I do not wish to make any observations in the present case.

Yours, &c.,
J. H. THOMAS.

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* No. 115. † No. 116. ‡ No. 117. § No. 116.

HIGH COMMISSIONER

(1) Report by Sir Herbert Stanley of farewell visit to Territories

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10503/111. No. 120.

DESPATCH

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 21st January, 1935.)

(No. 1096, confidential.)

SIR, Cape Town, 31st December, 1934.

I have the honour to submit a report on my farewell visits to the three High Commission Territories.

2. I visited Swaziland early in July, the Bechuanaland Protectorate shortly afterwards, and I had arranged to visit Basutoland early in October, but was obliged, through circumstances beyond my control, to postpone that visit until December.

3. I do not propose to weary you with a detailed account of my respective itineraries, but rather I will confine myself to topics of more general interest, and merely say that in each of the Territories I covered geographically as much ground as was possible in the time at my disposal.

SWAZILAND.

4. In Swaziland I opened both the European and the native sections of the Agricultural Show at Bremersdorp. In both sections the display of cattle was very creditable, and if only unrestricted access to the Johannesburg market could be secured, I am confident that stock-raising in the Territory would soon become a prosperous industry. At the time of my visit, cattle owners were suffering not only from the normal handicap of the weight embargo imposed by the Union Government but in addition from the veterinary restrictions to which the cattle export trade of the whole Territory had been subjected in consequence of a localized outbreak of East Coast fever. The exhibits of produce in the European section of the Show were unimpressive in quantity. This no doubt was due mainly to the discouragement and the economic stress caused to the settlers by the stagnation in the cattle trade. The women, however, had staged some admirable displays of home industries. In the native section the exhibits of produce were excellent and showed a marked advance on anything that I had seen in previous years; some progress was noticeable also in the native industrial exhibits. I am confident that the provision of improved accommodation for the display of native exhibits, for which I have recommended a relatively small grant of money in the Estimates for 1935-36, would serve as an effective stimulus to further development. The European Agricultural Society, though willing to continue the allotment of the necessary space on its show-ground and to help the natives in the staging and judging of their section of the Show and in the organization of their sports, is not in a position to finance the expenditure on the proposed building. The present structural arrangements on the native side are hopelessly unworthy and inadequate.

5. I found both Europeans and natives much disturbed by the statement which General Hertzog had made in the Union Parliament on the subject of his desire to secure the transfer of the administration of the High Commission Territories at an early date, a statement which, it will be remembered, was couched in a minatory tone hinting at a prospect of some further closing of the Union markets to our exports and at some restriction of the employment of our natives in the Union. It will be understood that a threat of this nature, coming as it did at a time when the inhabitants of the Territory were already suffering severe hardship from the embargoes actually in force, could not but produce a very disquieting effect. To the Swazis, so far as I can judge, the mere thought of transfer to the Union Government is as repellent as ever. Among the Europeans there is not the same unanimity. Mr. Pierce, who is believed to be in close touch with some of the Ministers in Pretoria, has for years been conducting propaganda, not always explicitly pro-Union, but by implication pointing at transfer to the Union as the only means of economic salvation. I am told on good authority, though I have no direct evidence, that latterly his campaign has become more intensive and has been fortified by promises of the construction of a railway and other millennial benefits in the event of transfer. Among the predominantly "poor Dutch" inhabitants of the southern area of the Territory—numerically much the largest portion of the European population—his influence is considerable, and I think it likely that, if a referendum were

taken, a substantial majority of the European inhabitants of the whole Territory would vote in favour of transfer. Of that majority an overwhelmingly large ratio would be " Dutch ", and though many of them, in their hearts, do not desire a change from the sympathetic and considerate administration under which they now live to a Government in whose tender mercies they have no great faith, their present impoverishment coupled with a sense of the obligations of racial solidarity might be expected to prove decisive factors. Among the more progressive, largely " British ", settlers in the North, generally speaking, transfer to the Union is anything but an attractive prospect. Politically they are led by Mr. Alistair Miller, and between his Party and that led by Mr. Pierce no love is lost. In addition to other motives, Mr. Miller has a real affection for the Swazis, and is strongly averse from contemplating their subjection to the conditions of native life in the Union. He and those who think with him have a passionate desire to remain " British " and to preserve the identity and develop the resources of Swaziland as a British Territory rather than as part of a State claiming sovereign independence and looking with a tolerant eye upon republican propaganda. To that unpalatable prospect bitterness would be added by the vision of a triumphant Mr. Pierce. Mr. Miller and his followers have never been willing to abandon the hope that, in the last resort, His Majesty's Government in the United Kingdom would come to the rescue of its loyal European and native dependants and not allow them to be starved into submission, but would bring such pressure to bear on the Union Government as to secure fair play for Swaziland and its products or would alternatively provide access to other markets. The line of argument suggested on the other side, that the United Kingdom is powerless to help them, is as gall and wormwood to Mr. Miller and his friends, and they applied to me all possible pressure in an endeavour to elicit some categorical countervailing assurance. While I think that a very large preponderence of sentiment and opinion among the progressive settlers in the north is definitely opposed to transfer and would assent to it merely as a counsel of despair, I think it fair to say that there are a few among the northern settlers, especially those influenced by non-resident property owners, such as Dr. Samuel Evans of Johannesburg, who regard transfer as the only alternative to a continuance of economic stagnation.

6. The anxieties of the " British " Party have been, of course, intensified by General Hertzog's barely veiled threats, and it was intelligible, and indeed inevitable, that the absence of any rejoinder should be imputed to weakness on the part of the High Commissioner, or even to subservience arising from the exigencies of his dual functions. The Swazilanders, however, are a courteous and hospitable people, and my personal reception by them was as cordial as could have been desired.

7. Nevertheless, my task was not a very easy one. I enclose a note* of the proceedings at an interview which I gave at Bremersdorp to a deputation from the Swaziland Farmers' Association. It was arranged by mutual consent that the discussion was to be informal and confidential so that I might be able to speak more freely than would have been possible, if publicity had to be contemplated. I agreed, however, at the request of the deputation, that a brief official summary should be compiled and communicated to the Agricultural Society, for their own reference, but not for publication. I append a copy of that summary*. The fuller note is a confidential document and is on record only in the offices of the Resident Commissioner and the High Commissioner.

8. You will observe that the whole discussion turned on the economic question, and that bitter complaint was made of the actions of the Union Government in its dealings with exports from Swaziland. Mr. Miller suggested, and Mr. Millin urged, that the Customs Agreement with the Union should be revised. The line of argument was that the inhabitants of the Territory were penalized by increased cost of living through the high prices which had to be paid in consequence of the protective Customs tariff of the Union, for its imports from the Union—practically the whole volume of its imports—and that our public revenue also was affected prejudicially, inasmuch as our share in the Customs revenue of the Union yielded a considerably smaller sum than would have been realized if the duties leviable in the Union on a number of articles of common use had not been fixed so high as to exclude importations of such articles from oversea. Through the high prices which had to be paid on such necessary commodities as sugar, flour, blankets, and footwear, the inhabitants of the Territory were in effect being taxed for the benefit of the Union producer or manufacturer, without any compensating advantage to themselves or to the revenue of the Territory, and at the same time we were being denied reasonably free access for our products to the Union market and were being threatened with the imposition of further obstacles or even prohibitions.

9. This, I think, is a perfectly just statement of the actual position, and I need hardly say that I have been for some years fully conscious of it.

* Not printed.

10. Mr. Millin contended that if we resumed and exercised our right to establish Customs of our own, with the ability to import from oversea (through Lourenço Marques), and if we applied a general tariff to all our imports, whether from the Union or from oversea, our Customs revenue would exceed very largely our present percentage share of the Customs revenue of the Union, and we should at the same time reduce very appreciably the cost of living in the Territory. He thought also that the value of our import trade was sufficiently important to the Union to be likely to induce the Union Government, rather than lose that trade, to relax its restrictions on our exports. He estimated the value of imports into Swaziland at about £300,000 per annum. In the absence of reliable statistics I am not in a position to confirm or dispute that estimate.

11. After I had left Swaziland, I received a memorandum in which Mr. Millin has elaborated the points which he had put to me orally. I attach a copy*, as it seems to me a document worthy of record.

12. In the course of the interview I pointed out the improbability of His Majesty's Government in the United Kingdom taking retaliatory action against the Union for the sake of the Swaziland cattle trade, and I reminded the deputation of the importance of the wider Imperial interests which would have to enter into consideration. I refrained carefully from giving any encouragement to the suggestion of a denunciation of the present Customs Agreement; I also lodged a caveat to the effect that if the Union were relieved of any obligation to admit our products to its markets, and if those products were excluded *in toto*, we might, in the absence of other markets, find our purchasing power so seriously curtailed as to preclude any hope of considerable revenue from the taxation of imports, and we might become so utterly dependent upon grants-in-aid for the financing of our necessary public expenditure that any further deferment of transfer to the Union might cease to be feasible. Although I thought it right to adopt this rather discouraging attitude in speaking to the deputation, knowing full well that they would regard it with disappointment as a further demonstration of weakness, I should not wish you to conclude that I am satisfied with the present position under the Customs Agreement, and that I should desire to exclude from consideration the possibility of seeking ways and means of bringing the Union Government to the contemplation of a less arbitrary and one-sided attitude towards the trade of the High Commission Territories. I believe that the open market in the Territories for exports from the Union is of appreciable value to Union industrialists and merchants, and that, if the possibility of a closing of that market or a restriction of free access to it were to loom on the horizon, considerable pressure would be brought to bear on the Union Government for the prevention of such a contingency, and that some check might be put upon the unneighbourly conduct of the Department of Agriculture in its efforts to protect the Union farmer *à tout prix*. On the other hand there are, I think, good reasons at this juncture for the further exercise of patience, not indefinitely, but at least for a few more months. It would seem wise to await the outcome of the Customs Conference between the Union and Southern Rhodesia. It is quite conceivable that, in the course of that Conference, the Union may acquire a livelier sense of the consequences likely to flow from inconsiderate dealings with its neighbours, and that the clamour of some of its farmers may cease to be regarded as the only factor of vital moment. If Southern Rhodesia succeeds in obtaining more equitable treatment, a precedent which might be useful to us will have been established, or alternatively if Southern Rhodesia breaks away from the Agreement and erects Customs barriers of its own against the Union, the hands of those who would desire to obviate a similar risk in respect of the High Commission Territories will be strengthened. Furthermore it is not unlikely that in the fairly near future there may be a change in the Ministerial headship of the Agricultural Department. And in the third place, I am not without hope that some conversations which I have recently had with Mr. Pirow, Mr. Duncan, Mr. J. H. Hofmeyr, General Smuts (after his return from England), and Mr. te Water (who raised the question of the Territories when he was dining at my house) may produce some effect. These conversations all took place on social occasions and were all entirely informal, but I availed myself of the occasion of my impending departure to speak more freely than I could well have spoken if I had been remaining at my post. I gave my impressions of the present attitude of the inhabitants, both European and native, of the several Territories towards the question of transfer, and in each case I explained the reasons, as I understood them, for such attitude. I laid stress particularly on the economic aspect. I pointed out the effect of the protective tariff of the Union on the cost of living in the Territories and on their revenue and I emphasized that, while this was a direct consequence of the free interchange provision of the Customs Agreement as applied to our imports, we were being denied the reciprocal

* Not printed.

application of that provision to our exports, and were being reduced thereby to the depths of impoverishment and to a condition of economic insecurity which stood in the way of a progressive policy of economic development. It could surely, I suggested, not be intended that transfer to the Union, if and when it came about, should be effected by means of starving embittered peoples into reluctant acquiescence—even assuming that the risk of armed resistance could be wholly discounted. Was it desirable, I asked, that Territories, which it was hoped to take over, should first be rendered incapable of contributing to their own support? I pointed out that the disappointment and the hardships caused by the present embargoes and the apprehensions aroused by threats of the imposition of further restrictions were now giving rise in certain quarters in the Territories to a trend of opinion which considered that we were losing more than we were gaining under the Customs Agreement as applied to us, and that its supersession by some arrangement giving us fiscal autonomy might better serve our interests. I said, however, that I personnally had always been very loath to contemplate any action disruptive of such unity as existed in South Africa, and that I should greatly prefer to retain the principle of free interchange, provided that in practice the interchange were kept reasonably free for both parties. I cited various instances in which veterinary precautions appeared to have been conceived and applied with such unnecessary harshness as to have given rise to an impression that they were attributable to economic motives. I mentioned that, although the Fiscal Conference of 1932, which had met at the instance of the Union Government and under the chairmanship of Dr. Bodenstein, had presented a unanimous report, that report had been shelved without so much as a word of acknowledgment or explanation. (General Smuts at this point asked me whether all our difficulties and grievances would be removed if the recommendations of that report were adopted. I replied that I could not go so far as to say that: we should not be getting all that we desired or all that we might have claimed under the terms of the Customs Agreement, but the acceptance of the report would have eased the situation and would have been regarded by us as an earnest of good will.) I made it clear that our cause of complaint arose out of the economic policy of the Department of Agriculture: other Departments, and especially the Department of Native Affairs, had been consistently helpful and considerate. All the Ministers to whom I spoke, and none more explicitly than General Smuts, ascribed the trouble to the ineptitude of General Kemp. They did not indicate any sense of collective responsibility, but hinted that General Kemp's régime might be nearing its end. (General Smuts expressed grave concern at the estranging effect which General Kemp's proceedings had produced on the relations of the Union with its neighbours in Southern Rhodesia and the High Commission Territories, and added that he was considering seriously whether it was not incumbent on him to fall in with the Prime Minister's proposal that he should take over the Department of Agriculture himself.) Finally I touched on the difficulties created for those in charge of the administration of the Territories by such speeches as that of General Hertzog in the House of Assembly, and I suggested that the path towards transfer was not made easier of access by the use of threats. This elicited a repetition of what I had been told before, namely that the statement in question had been made by the Prime Minister on the spur of the moment and without prior consultation with his colleagues. I did not think it necessary to remind General Smuts that a certain recent speech of his in London had also not been wholly devoid of minatory ingredients. Both he and the other Ministers signified surprise when I mentioned casually, in passing, that during the last year or two a person entirely ignored by the Union Government and entirely excluded from its confidence in its various *démarches* on the question of the transfer of the High Commission Territories had been the High Commissioner himself. I should not have referred to this curious phenomenon, had I not been on the verge of departure. I referred to it, not for the ventilation of any personal displeasure, but rather in the hope that an attitude which may perhaps have been due only to an oversight in respect of myself, might not be perpetuated in respect of my successor. At the end of our conversation General Smuts said that he was very glad that we had had this talk and that I had spoken to him so frankly, as friend to friend.

13. Reverting now, from this digression, to my interview with the deputation from the Swaziland Farmers' Association, I may explain, with reference to the representations in favour of participation in any Southern Rhodesian export trade in cattle via Lourenço Marques, that Mr. Gilchrist, who was one of the Southern Rhodesian delegates to the Railway Conference at Cape Town in May, had told me of his schemes for the movement of cattle to the Lourenço Marques Cold Storage Works for slaughter and export. I asked him whether, in the event of the successful conclusion of his negotiations with the Portuguese authorities, and on the assumption that an oversea market could be found for beef so exported, his Government would see any objection to allowing the cattle-owners of Swaziland to enjoy a share of those facilities. He assured me that there would

be no objection, but he is now no longer a Minister, and in the meanwhile further outbreaks of foot-and-mouth disease in Southern Rhodesia have presumably necessitated a suspension of any negotiations which he may have initiated. If Lourenço Marques should eventually become a port for the export of Southern Rhodesia meat, the geographical proximity of Swaziland and the existence of the railway line to Goba would place that Territory in an advantageous position for participation. The potential supply of Swaziland cattle would not, of course, be sufficiently large by itself to warrant the inception of slaughtering, chilling, and freezing operations at Lourenço Marques, and so far as I know, the problem of finding a lucrative oversea market for any great quantities of meat exported from Lourenço Marques still remains unsolved.

14. I had a meeting with settlers from the southern portion of the Territory at Sipofaneni, where the bridge which was being constructed over the Great Usutu River seemed to me to be a very excellent piece of work. The meeting, which had been arranged by Mr. Pierce, took place out-of-doors in pleasant surroundings. The proceedings were not of very special interest. A series of obviously pre-concerted questions were put to me in terms which suggested an intention to lay a trap for an unwary High Commissioner. No high degree of alertness was needed to circumvent that design. Ostensibly the grievances brought forward were all aimed at the Union Government for its actions in contravention of the obligations of the Customs Agreement. The object, no doubt, was to draw from me an admission of the powerlessness of the United Kingdom Government to help the Territory against the Union. Such an admission in that company (which consisted mainly of "Dutch" farmers) would, of course, have been useful as an argument to show that the only hope of salvation lay in transfer to the Union. Some of the allegations made were utterly inaccurate, others were grossly exaggerated, and I had no difficulty in dealing with them. When I was pressed as to what action was possible, I said that one possibility, though it was not a course which I wished to advocate, would be the denunciation of the Customs Agreement and its replacement by some arrangement which would give us bargaining powers by enabling us to import our requirements from elsewhere than the Union. This was not an answer which had been expected or desired, and its effect on the audience was amusing to behold. The meeting was followed by an alfresco luncheon, provided in very generous and charming fashion, by the settlers' wives. This meal had been intended as a wholly non-political demonstration of friendliness, but to the manifest annoyance of the rest of the party, Mr. Pierce, who presided, seized the opportunity of proposing my health to deliver a long speech in which, after saying some very pleasant things about myself personally, he launched out into a highly coloured recital of the woes of the Territory. The picture which he presented was so absolutely overdrawn that it was an easy matter for me to administer in good humour the necessary corrective in my reply. Subsequently, as you will be aware from semi-official correspondence, Mr. Pierce endeavoured orally and in writing to elicit from me some extension of the assurances given in Parliament by yourself and others, as to the consultation of local opinion upon proposals for the transfer of the Territory. I confined myself, however, to referring him to the text of the Parliamentary statements. I have a warm regard from Mr. Pierce as a man. As a politician he leaves me unimpressed, but he grows very excellent grape-fruit on his Swaziland farm, and that, at any rate, may be accounted unto him for righteousness. I may mention incidentally that General Smuts, in his conversation with me, went out of his way to disclaim, on behalf of the Union Government, any responsibility for Mr. Pierce's activities.

15. Before leaving Sipofaneni I inspected the bridge-construction works and the new medical outpost station, and I visited the camp, at the adjacent hot springs, of a number of Dutch small farmers from the Union who come there annually with their families, in their ox-wagons, to bathe in the medicinal waters. The camp was well-kept, and its occupants gave me a cordial reception, due perhaps to my efforts to converse with them in broken Afrikaans.

16. I visited a number of settlers on their farms in other parts of the Territory. They were all very hospitable and very friendly. They were passing through times of great difficulty owing to the Union embargo on their cattle, but they show a courageous spirit and seem to me deserving of help. One of them, in the vicinity of Stegi, is conducting an interesting and promising experiment in the growing of certain kinds of oil-nuts, for which there is said to be a good market. The Resident Commissioner can be relied upon to keep a sympathetic eye on any such experiments. I also met the local residents at Mbabane and Mankaiana. Time, unfortunately, did not permit of my undertaking a trip to Piggs Peak and Forbes Reef, where a certain amount of mineral development is in progress. If the gold deposits which are being explored

should prove capable of payable working, the whole economic outlook of the Territory would undergo a marked change for the better. Experience elsewhere has taught me, however, not to be over sanguine, and I am not prepared to say more than that there would seem to be some possibility of profitable gold-mining.

17. Turning now to the natives, I must record that the Paramount Chief asked for a private interview with me in order to seek my advice with regard to the question of transfer. I received him at the Resident Commissioner's house at Bremersdorp, and had a *tête-à-tête* conversation with him. At his request I explained to him the legal effect of recent constitutional developments on some of the provisions of the Schedule to the South Africa Act. In the light of my explanation, he understood that, after the transfer of the Territory to the Union, neither the Government nor the Parliament of the United Kingdom would retain any legal right of intervention, but I impressed upon him that, if a self-respecting Government, such as that of the Union, gave pledges on taking over a territory, such pledges would be honourable obligations just as binding morally as if they were supported by legal safeguards. Sobhuza then asked whether it would be possible to preserve a right of appeal to the Privy Council. I replied that I saw no probability of that. His next question was whether, in the event of the Union (after transfer had taken place) severing its connexion with the British Empire and becoming a republic, the Swazis (who would always wish to remain under the British Crown) would be able to leave the Union and retain their old allegiance. I said that, so far as I could form an opinion, the Swazis, if they were once in the Union, would have no means of getting out again. On the general question of their attitude towards transfer, I told him that I did not wish to give him any guidance, nor did I desire at present to obtain an expression of his views. As he had been informed, the Swazis would be given at the proper time an opportunity to submit their views, and those views would receive careful consideration (though they would not necessarily be decisive) before a decision was reached in the United Kingdom. Transfer had not yet been applied for in the manner prescribed in the South Africa Act, and the time for such consultation of the Swazis had not, therefore, come. When it came, the Government would wish to know what the Swazis themselves thought about the transfer, and not what the Swazis might believe the Government to wish them to think. The only advice which I could give him was that he should not commit himself in advance in either direction, but that when the Swazis' opinion had been sought, he and they should consider the matter most carefully in all its aspects, not only from the point of view of sentiment but also from the point of view of economics, and that before coming to a conclusion he should endeavour to obtain in writing a definite statement of the conditions subject to which the Union would take over the Territory, with special reference to such matters as the form and methods of administration, the preservation of tribal institutions and tribal lands, and the assurance of marketing facilities for their cattle and produce. Then they would be in a better position than now to judge what transfer would mean to them. He asked whether the Swazis would be allowed to send a deputation to England before a final decision was given. I said that I should no longer be High Commissioner and could not make a definite promise. My own view was that facilities for such a deputation from each of the three Territories ought to be afforded and that, before I relinquished my present office, I would leave an expression of that view on record. I do so now by means of this despatch, and I desire to make it clear that I hold that view very strongly, and that in my opinion the natives would feel deeply aggrieved if they were refused permission to send a deputation from each Territory to London. I think also that the administrations ought to assist them in meeting the expenses of such deputations. Sobhuza finally enquired whether it would be permissible for representatives of the natives of the three Territories to meet together for joint consultation before the deputations went to England. I said that if deputations went to England, it would seem to me preferable that any such joint consultation should take place over there, before they made their representations to His Majesty's Government. A meeting for that purpose in South Africa would be likely to attract much attention and might well give rise unnecessarily to suspicions or even ill feeling in the Union. Sobhuza thanked me very warmly for all that I had said to him.

18. A day or two later, viz., on the 15th July, a meeting of Swazis was held at the Matapa National School to bid me farewell. It was largely attended, and I was touched by the manifestations of personal good will and of regret at my departure. I enclose a copy of the address* which was presented to me by the Paramount Chief. You will notice that the Swazis paid me the high, and not very usual compliment of conferring upon me formally the native name of " Sobantu " (which being interpreted

* Not printed.

is said to mean " he who loves the people "). I am told that previously this name had been borne only by the late Bishop Colenso. I was also presented with an ox-hide shield adorned with the badges of the Paramount Chief's Regiment, an assegai and a knobkerrie.

19. The Paramount Chief's mother, Lomawa, successor to Labotsibeni as Ndhlovukazi (she-elephant) and keeper of the rain-making medicine, a very important personage in the tribal hierarchy, was suffering from ill health, but she sent word that she could not omit to pay her respects to me once more before I left the Territory, and despite her physical infirmity she came to see me at the Resident Commissioner's house, attended by one or two of her indunas and other members of her household. I expressed my appreciation of the effort which she had made, and we had a very friendly conversation without, however, touching on any political matters.

20. I append copies of two issues of the *Times of Swaziland**, in which will be found some account of my tour and reports of speeches addressed to and made by me. I spoke extempore on all occasions, and the reports of my remarks must not be taken as complete or as accurate in every detail, though they reproduce the general sense of what I said. The issue of the 26th July contains also some editorial comment.

21. During all my peregrinations I saw only one swarm of flying locusts, and no hoppers at all, but the season for invasions of the red-wing locust on a large scale had not yet arrived. I did not gather that the previous infestation had done very extensive damage.

22. With reasonable good fortune the Territory could, I think, soon again become self-supporting if only the Union Government ceased to discriminate against its products. Swaziland cattle would command at Johannesburg a ready sale at remunerative prices. The type of tobacco produced is very suitable for the South African market, but not, I fear, for export oversea. Cotton might, subject to satisfactory world prices, become a lucrative crop for native growers. The quality of the local citrus fruit is improving. Captain Keith's experiments with Tung Oil and Pekan nuts (to which I have referred above) at Stegi are far from unpromising. The establishment of the proposed creamery has been attended with local difficulties in regard to the financing of the business, but when these have been surmounted, dairying might well become a very useful minor industry. Most of the settlers in the northern portion of the Territory and some of those in the south are of a good type. The natives are still rather backward, but signs of progress are noticeable, and Sobhuza seems to have developed into quite a good Chief. The discovery and mining of gold in payable quantities would of course be a factor of incalculable importance in the economic prospects of the Territory. It would create local markets, foster local industries, provide local employment, and rehabilitate local finances. But even without gold-mining, the Territory might be reasonably prosperous, provided that inequitable restrictions on its access to external markets could be removed.

23. I observed with great satisfaction many indications of the high esteem in which the present Resident Commissioner, Mr. Ainsworth Dickson, is held. Missionaries, farmers, members of the Advisory Council, and others expressed to me their pleasure at his return to duty after his absence on sick leave, and their hope that his health might permit of his long continuance in office. In those quarters, the general opinion seemed to be that the experiment of introducing a Resident Commissioner from without had proved so successful in the case of Mr. Dickson as to warrant a request for its repetition upon Mr. Dickson's retirement. In other quarters, no doubt, there is a feeling that the appointment should then go to a member of the Swaziland Service, and consequently the inevitable uncertainty as to the duration of Mr. Dickson's physical fitness for the requirements of the post has created a local situation of some delicacy.

Bechuanaland Protectorate.

24. I do not propose to deal at any great length with my visit to the Bechuanaland Protectorate. Apart from a private conversation with Tshekedi to which I will refer later, and from such other matters as have already formed the subject of separate reports, nothing of exceptional interest has to be recorded. I started my official tour in the north, at Francistown, where I found considerable mining and prospecting activity in progress. There had been a relatively large influx of Europeans and natives, and the whole scene was very different from the vista of stagnation to which I had previously become habituated. No spectacular results have as yet been achievrd, but there were indications which seemed to justify some hopefulness. I visited several of the properties on which development work was taking place, and I was shown some samples of ore of surprising

* Not reprinted.

richness, but I am not prepared to say that the prospect could as yet be regarded as assured. I was unfavourably impressed with the lay-out and the condition of the compounds in which the native labourers on those properties were housed, and I did not conceal my dissatisfaction. I trust that the regulations which have now been issued will enable the authorities to secure the necessary improvements. I had some conversation with Major Pellatt, who was then acting as General Manager for the Tati Company. I found him intelligent, enterprising, and interested in the welfare of the natives, and I am sorry that he is no longer there. I inspected the European, native, and " coloured " schools, and addressed the children. The native school was, of course, the largest and seemed to me the most animate of the three. The Francistown Creamery appeared to be well designed and conducted. Its establishment, which is due almost entirely to the indefatigable energy and enthusiasm of the Resident Commissioner, must be of substantial benefit to the European and native owners of dairy cattle in that part of the Territory.

25. At Mahalapye, Tshekedi came to see me and we had a *tête-à-tête* talk in my railway saloon. Its general purport was very similar to that of my conversation with Sobhuza, which I have described above in some detail. I adopted the same attitude and gave the same advice. It was quite clear to me that the prospect of transfer to the Union was very unattractive to Tshekedi, and I have no doubt that the Bechuana generally share his feelings in that respect. Towards the end of the interview Tshekedi asked me whether, if a change had to be made, it would not be possible to arrange that the transfer should be to Southern Rhodesia rather than to the Union. I evaded a definite reply and merely said that I would bear in mind that he had expressed such a preference. His attitude towards the Administration seemed to be more amicable than on former occasions, but I fear that the memories of the incidents connected with his suspension last year still rankle beneath the surface. He is, I think, a man of unforgiving temperament and prone to suspicion, but he has some good qualities, and I personally have not found him unresponsive to kindness or impenetrable to reasoned argument, but great patience is needed in dealing with him. He will never be easy to handle. My task has been lightened by the fortuitous circumstance that he seemed to have confidence in my intentions even when he disagreed with my views or actions. He is probably conscious, and may be resentful, of the fact that, without the backing of the Administration, he would have difficulty in maintaining his authority among his own people, though they would be likely to rally to his support if the Administration were to pick a quarrel with him. I feel sure that, however uncongenial he may find some of the implications of the present Administration, he would most certainly not desire the substitution of control from the Union.

26. I ought perhaps to mention that at a tea party given in my honour at Mahalapye at which, *inter alios*, some of the settlers from the Tuli Block were expected, the Tuli Block was represented by the attendance of only one of its residents, Mr. Jousse. Whether the abstention of the others was intended as a gesture of unfriendliness, or whether it was due to an intelligible reluctance to incur expenditure on petrol in the present circumstances of acute economic depression, can only be a matter of speculation. Generally speaking, with a few notable exceptions, the conduct of the settlers in the Protectorate under the blows of adversity has not compared favourably with the conduct of the Swazilanders, but in the Protectorate the misfortunes have been greater, and although the Administration is not to blame for them and has indeed made heroic efforts to help the people and relieve distress, it is not surprising that the sufferers should have become disgruntled and unreasonable. I have a suspicion also, though no clear proof, that feelings of discontent may have been deliberately fomented, or at any rate enhanced, through influences emanating from the Union. It is fair to add, however, that the settlers other than those of the Tuli Block came to meet me, throughout my tour, in as large numbers as usual and were not lacking in any of their customary marks of courtesy and respect. The European Advisory Council at its recent sitting sent me a friendly and appreciative message of farewell.

27. I spent a day at Kanye, the pleasantly-situated principal village of the Bangwaketsi, and was given a very cordial reception by Chief Bathoen and his tribe. Among the children there, the " Pathfinder " (male) and more particularly the " Wayfarer " (female) movements have made very satisfactory progress, with gratifying results on their appearance and bearing. Under the guidance and with the help of Mr. Rowland, a local trader, not of quite pure European descent, an admirable hard and wide all-weather road has been constructed from the village to a neighbouring hill-top on which a large well-built reservoir has been erected by the natives as a memorial to a

former Chief. It was there that my formal meeting with the tribe took place. In my reply to their address, of which I enclose a copy*, I gave them words of encouragement and good advice. No report is available, but nothing was said that calls for special record. Prior to that indaba, I had a meeting in the village itself with the Chief, who was accompanied by his mother, his wife, and some of his principal headmen. So far as I can recollect, the conversation was mainly complimentary.

28. Both at Kanye and at Molepolole, the principal village of the Bakwena (which I visited in March), I was impressed with the seriousness of the problem arising from the presence among the natives of members of white and coloured families of a very poor physical, moral, and economic type. The easiest solution probably would be to let nature take its course and allow these people to become more and more assimilated to the natives among whom and on whom they live, and eventually merged in the respective tribes. But to this development there are, especially in respect of the Europeans concerned, obvious objections, not only on grounds of sentiment. These people ought, of course, never to have been permitted to establish themselves in native reserves, but they were admitted many years ago at the invitation or with the consent of the local Chiefs, and they now have no other homes and have presumably become unfit to maintain themselves in a civilized environment. I should much like to remove them, or at any rate their children upon their attainment of maturity, out of the reserves, but the difficulty is to know where to place them, and how to enable them to become self-supporting, after removal. After many discussions with the Resident Commissioner, I am inclined to think that an experiment worth trying might be to set apart some land along the Molopo River, and establish and equip on it one or more large farm colonies for the reception and training of any Europeans removed from the reserves who might be willing to go there voluntarily. If they went there, however, as many of them doubtless would be forced to go by economic stress, they would be admitted only on the condition of undertaking to remain for a specified term of years, and to live there under discipline and in receipt of compulsory education. On leaving the farm colony at the end of their period of training, those who had benefited by it sufficiently, would be established on suitable adjacent plots, provided with some cattle, some seed and some implements, and helped to farm those plots under supervised co-operative methods. Colonel Rey sees serious difficulties in the way of the adoption of such a scheme, and I recognize fully that it would entail a relatively large expenditure of public funds, and that its ultimate success could not be guaranteed. Nevertheless, it seems to me the only alternative to a despairing policy of *laissez-aller*, and as such I commend it to the consideration of my successor. For immediate purposes I have accepted the Resident Commissioner's proposal to remove these alien elements out of the native villages, and to establish them in separate villages, consisting of very simply and cheaply constructed dwellings generally of the native type, in near proximity to the villages from which they had been removed. But I have accepted this proposal very reluctantly. It is at the best a temporary palliative, and though it will meet some of the most pressing difficulties, arising out of the dissatisfaction of the Chiefs and their people with the existing conditions, it leaves unsolved the inevitable future problem which will become increasingly troublesome with the natural increase in the numbers of these poor whites, who are productive only in the procreation of offspring. I am entirely unable to visualize how an eventually large conglomeration of poor whites living in a native reserve and near a native village, but not amenable to tribal authority, is to be correlated with the life of the tribe. I am sadly afraid that we may be leaving a *damnosa hæreditas* to those who come after us.

29. On my return from Kanye, I received at Lobatsi Chief Molefi of the Bakgatla who was accompanied by his uncle, Isang, and some of his headmen. I had sent for the young Chief in order to admonish him, and this I did publicly in the presence of his followers and afterwards privately in a *tête-à-tête* conversation. I have in earlier despatches† reported fully on this interview, and on subsequent events in the Bakgatla tribe. It is to be hoped that the recent proceedings in the Kgotla, which have resulted in the temporary retirement of Isang from public life and in the appointment of a body of guardians to supervise the doings of Molefi, will produce more settled and peaceable conditions. Molefi is not devoid of good instincts, but his weakness of character, which has led him to over-indulgence in strong drink and to negligence in the discharge of his duties, is such that I should hesitate to build any very confident hopes on his permanent reformation.

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* Not printed.

† *See* No. 20695/30: not printed.

30. On the following (Sunday) morning I laid the foundation stone of an Anglican Church at Lobatsi, the first such church for Europeans to be built in the Territory. It is being erected and will be served under the auspices of the South African Railway Mission, a society in whose beneficient activities I have for many years taken a lively interest. The Bishop of Kimberley and Kuruman came up specially to officiate at the ceremony, and another participant was the Reverend L. Hands, the then Head of the Railway Mission, a widely known and widely loved priest, who, I grieve to say, died a week or two afterwards. There was a large attendance of local settlers, and though the majority of them may be presumed to be members of the Dutch Reformed Church and certainly were in anything but affluent circumstances, they all contributed to the collection, with a remarkably satisfactory result. The ceremony was followed by a public luncheon, provided on a most hospitable scale by the local ladies. The Bishop and I and others spoke—not, of course, on any political topics. The atmosphere was one of genial cordiality. In the afternoon I spent some time at the Athlone Hospital.

31. Before leaving Lobatsi I had meetings with several of the Chiefs of the Southern Protectorate and with the Europeans of that area. Both were large meetings. It was impossible to keep the natives from referring to the subject of transfer, and I was closely questioned. I reiterated, in rather more guarded terms, the substance of what I had previously said to Sobhuza in Swaziland and to Tshekedi at Mahalapye. I warned the Chiefs against volunteering public expressions of opinion before, at the proper time, they were asked to formulate their views, and against coming to any conclusion without the fullest consideration and without definite information as to any conditions and assurances which would be attached to transfer. I warned them also against premature preparations for the despatch of delegates to England. This advice did not seem very palatable until I told them, as I had previously told both Sobhuza and Tshekedi, that I would leave on record an expression of my view that at the proper time a deputation to England from each of the three Territories should be facilitated, but again I made it clear that the decision would not rest with me. In reply to further enquiries I said that, although I deprecated public discussion of the question of transfer at this stage, I saw no reason whatever why they should not discuss it privately among themselves, if they so desired. Molefi, who took a prominent part in the proceedings, seemed to be urging that the Chiefs should begin forthwith to concert collective action or plans for collective action, but he failed to make clear to me what exactly he had in mind. I left him in no doubt, however, that the Government would not tolerate anything beyond discussion of the question. I feel confident that, if I had asked the meeting whether they wished to go into Union, the answer would have been an emphatic negative, and I should be greatly surprised if that were not the attitude of all the Bechuana Chiefs and tribes in the Protectorate. I refrained most carefully, however, from giving them an opportunity to define their attitude. Molefi, however, was quite unable to conceal his aversion from transfer. I should surmise that the obvious intensity of his feeling on the subject had been accentuated by the circumstance that his uncle Isang (who is known to be in touch with some prominent personages in the Union) had been working to enlist support for transfer among the Bakgatla particularly, and among other tribes also. To that circumstance some at least of Isang's present unpopularity among the Bakgatla may not improbably be due, though this would not be the only reason.

32. At the European meeting an address was presented to me from the European inhabitants of the Southern Protectorate, and a separate address from the European community at Gaberones (which, as you know, lies within the Southern Protectorate). The latter was presented by Mr. Glover. I enclose copies of both documents*. The one was a friendly valedictory message, the other an appeal for transfer to the Union with a view to the removal of the economic and veterinary restrictions imposed by the Union on Protectorate cattle. Mr. Glover fortified these representations by reading a very long statement. I had not seen it before and I did not find it easy to follow in detail. It was involved in structure and lachrymose in tone, and did not appear to be very accurate in statement or cogent in argument. I replied to it briefly and, I trust, suitably. The Resident Commissioner subsequently sent me a copy of Mr. Glover's paper, but unfortunately I seem to have mislaid it, or it may have been misfiled in the Office, and I am unable therefore to enclose it. It was not a document to which much importance need be attached, and I gathered that the persons from Lobatsi and other places who attended the meeting were displeased with Mr. Glover's action in presenting a separate address and inflicting his subsequent tale of woe upon me on such an occasion. I expressed, of course, the sympathy, which I feel very genuinely, with the

* Not printed.

inhabitants of the Protectorate in the series of misfortunes which have befallen the Territory during the past three years, the world-wide economic depression, cattle disease, drought, floods, malaria, locusts, and—I might have added, but did not—the prior disastrous effects of the Union Government's adherence to the gold standard, but I pointed out that some of these ills had befallen other countries as well, and I hinted that there were difficulties for which political or constitutional changes would not necessarily provide a panacea. My impression is that if a reasonably lucrative market for Protectorate cattle could be secured, most of the agitation for transfer to the Union would vanish overnight, despite the propaganda which has been carried on from across our borders. I attach an extract from the *Rand Daily Mail**, which gives some account of the proceedings at both the native and European meetings at Lobatsi. It is not an adequate report, but none other is available.

33. I visited a number of schools, European and native, in the Southern Protectorate, among them the (Roman Catholic) St. Theresa School for native children, a very excellent institution. There I was presented with an address of which I append a copy†. I also revisited the Oblate Fathers' Mission at Khale. The priests and lay workers there are all, I think, German, and their efficiency and effectiveness have made it a model institution. A large, admirably managed, farm is attached to the Mission, and medical services were about to be provided. *O! si sic omnia.* I went out also to the Barolong Farms, visited the Good Hope Native School there, a very creditable building, and had a particularly pleasant meeting with the Barolong Chief and people. Some of the European schools are disgracefully badly housed. School committees are responsible for the fabric, but the people are so impoverished that the buildings, miserable shanties at the best, are going to rack and ruin, and in one or two instances are no longer safe. It was clear to me that the Administration would have to give some help, and I discussed ways and means on the spot with the Resident Commissioner and Mr. Dumbrell, the head of the Education Department.

34. I saw no locusts whatever during this tour, but, as you will be aware, there have been heavy incursions since.

35. A visit to the Bechuanaland Protectorate in these days cannot be other than a depressing exxperience, but notwithstanding all the "slings and arrows of outrageous fortune", good work is being done by many of our officers, and the keenness, the resourcefulness and the indomitable spirit of Colonel Rey are an asset to the Territory which cannot be overrated.

BASUTOLAND.

36. You will have gathered that my visits to Swaziland and the Bechuanaland Protectorate did not partake of the nature of a holiday. My farewell tour in Basutoland, though strenuous as a physical effort, was in other respects less exacting. I covered much ground, addressed many native meetings, visited and inspected institutions of all kinds and attended, during my leisure moments, to work which followed me from the Office, but I was not confronted with political conundrums, and I was received with such cordiality that my task was both easy and delightful. The question of transfer was not raised at all. The natives, no doubt, assumed quite correctly that I was fully aware of their feelings. The traders came to meet me socially and refrained from submitting any requests or grievances. With missionaries my relations always are happy. The officials, from the Acting Resident Commissioner downwards, did everything that was humanly possible to make my visit one of unchequered pleasantness. All the arrangements had been carefully prepared and excellently organized. I should be ungracious indeed if I had failed to appreciate all the kindness shown to Lady Stanley and myself wherever we went. We were entertained most hospitably at all the stations which we visited, and on our departure we were given a "send-off" which I shall always remember gratefully. Mr. Sims accompanied me everywhere, and as I had been unable to bring a Staff Officer of my own with me, Captain Booth, the Staff Officer of the Basutoland Mounted Police, placed his helpful services at my disposal. We were fortunate with the weather, and were able to carry out our whole programme with the exception of only one expedition—to the Mission School at Cana, the approach to which was rendered impassable by a flooded river.

37. The country was looking beautiful, greener than I had ever seen it before. The cattle and the ponies were in exceptionally good condition, and the young crops of wheat and maize looked very promising. I saw several swarms of flying red-wing locusts, but they did not appear to be doing much damage, though some of the green mealies had suffered. The hoppers had been dealt with most successfully, with praiseworthy co-operation from the natives.

* Not reprinted. † Not printed.

38. In my various speeches to the Basuto—all unrecorded—I thanked them for their loyalty, sympathized with them in their recent sufferings from drought, famine, and typhus fever, and adjured them to co-operate with the Government in the checking of erosion and to be guided generally by the advice of the medical, veterinary, and agricultural officers. I impressed upon the Chiefs that their high position involved correspondingly great responsibilities towards their people, and I warned them that the Administration would not allow those responsibilities to be neglected. I expressed my sorrow at the impending severance of my relations with the Territory and its people. I spoke to them of Mr. Richards, the future Resident Commissioner, and of their duty to make his task easy by giving him their confidence and support, and I need hardly add that I assured them, in the light of personal knowledge extending over very many years, that in Sir William Clark they would have a true friend and a wise guardian of their interests.

39. I visited, and addressed meetings of the Chiefs and people, at Leribe (Hlotse), Butha-Buthe, Peka, Teyateyaneng, Mafeteng, and Maseru. Everywhere—except at Mafeteng where only speeches were made—addresses, of which I enclose copies*, were presented to me by the Chiefs. I enclose also copies* of addresses presented by the Indian community at Butha-Buthe, and by the headmaster of St. Agnes (Anglican) School near Teyateyaneng.

40. The Paramount Chief had been very seriously ill, so seriously that his life was despaired of, but by the time of my arrival he had begun to recover, and he insisted on making the special effort of coming in to Maseru from Matsieng in order not to miss this last opportunity of paying his respects to me in person. I expressed my appreciation, and told him to remain seated while his address was being read. He insisted also on coming to the railway station on the following day to see me off. He looked, and obviously was, very frail in health.

41. Throughout this tour, as also in my visits to the other two Territories, I visited everywhere the local schools, hospitals, and gaols. I particularly enjoyed my visit to the Lerotholi Technical School at Maseru, where Mr. Bull continues to render admirable service.

42. I was greatly interested in the anti-erosion work which is being carried on in the vicinity of Maseru by means of the construction of contour trenches, and small dams. It is a simple but very promising experiment. It has the effect of diffusing the flood water, preventing the creation of new dongas, and facilitating the collapse of the walls of the old dongas. It is being conducted under the supervision of Mr. Russel Thornton, and he will shortly be putting forward an application for the funds which will be necessary for the eventual extension of such work to the whole of the Territory. I trust that the application will receive very sympathetic consideration. The need for conservation of the soil is clamant, and even if the expenditure should not be directly remunerative, its indirect effect on the welfare of the country, both positively in increasing its productiveness and negatively in preventing its utter impoverishment, must redound to the benefit of the public revenue as well as to the prosperity of the Basuto individually and collectively. The natives will be able to undertake the manual labour, but expert superintendence will be necessary to ensure that the trenches are made in the right places and with proper regard to levels.

43. Mr. Sims appears to be shaping very well indeed as Acting Resident Commissioner, and in the course of the next few months when Dr. Hamilton Dyke will have taken over the Medical Department and, as I hope and recommend, Mr. Bull will have been appointed to the headship of the Education Department, and with Mr. Russel Thornton in charge of Agriculture, Mr. Richards will take over an Administration exceptionally well staffed in the most important of his heads of Departments. In these circumstances I look to the future of the Territory with real confidence.

I have, &c.,

H. J. STANLEY,

High Commissioner.

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* Not printed.

(2) Title of the High Commissioner (i.e., High Commissioner for Basutoland, the Bechuanaland Protectorate, and Swaziland)

10503 A/2. No. 121.

MR. C. T. TE WATER (HIGH COMMISSIONER FOR THE UNION OF SOUTH AFRICA)

to

MR. J. H. THOMAS (SECRETARY OF STATE FOR DOMINION AFFAIRS).

[*Answered by No. 122.*]

DEAR MR. THOMAS, Trafalgar Square, W.C.2, 20th September, 1933.

I have received instructions from my Minister of External Affairs dated 25th August last, to bring to your notice, for the consideration of His Majesty's Government in the United Kingdom, the matter of the title of His Excellency the High Commissioner for the Native Territories of Basutoland, Swaziland and Bechuanaland and for Southern Rhodesia, and also the terminology relating both to his Commission, and to Proclamations issued thereunder by authority of His Excellency.

In that respect I am directed to invite your attention specifically to the Proclamation issued by Admiral Evans as " High Commissioner for South Africa," dated 1st August, 1933 (appearing in Official Gazette Extraordinary No. 1674: Volume CXXIII); to Article III of the Dormant Royal Commission dated 10th March, 1931, published with the foregoing Proclamation; and also to Article VII of the Royal Commission issued to Sir Herbert Stanley, dated 10th March, 1931, and published in Official Gazette Extraordinary No. 1552, Volume CXIV, of 6th April, 1931.

His Majesty's Government in the Union desire me to state that, in the first place, they would like to point out to His Majesty's Government in the United Kingdom that they do not consider the title of " High Commissioner for South Africa " an appropriate one for an officer whose jurisdiction is confined to the three native protectorates and Southern Rhodesia.

The Union Government would observe that the term " South Africa " necessarily embraces the Union, and in consequence the title conveys the impression that the High Commissioner in some way or other holds sway in the Union.

As to the substance of the Proclamation, of the 1st August, 1933, it will be observed that " all other His Majesty's loyal subjects in South Africa " are required by the High Commissioner for South Africa to aid and assist the High Commissioner in the execution of his duties, whilst the Royal Commissions command " all other Our loyal subjects in South Africa " in a similar sense.

In that regard I am directed to state that His Majesty's Government in the Union do not consider it constitutionally appropriate, as has been done in the Proclamations above referred to, for His Majesty's Representative to issue a command to His Majesty's subjects over whom he has no jurisdiction, whilst with reference to the Royal Commissions, they consider it inappropriate that commands to His Majesty's subjects such as fall under the jurisdiction of His Majesty's Government in the Union should issue otherwise than with the advice of His Majesty's Ministers in the Union.

In the circumstances, His Majesty's Government in the Union would be grateful for the consideration of these matters and would appreciate being informed that His Majesty's Government in the United Kingdom could see its way clear firstly to the alteration of the title of their High Commissioner for the Native Territories of Basutoland, Swaziland and Bechuanaland in such a manner as not to create the impression that such High Commissioner is vested with any authority in and over the Union of South Africa; and secondly to the excision from his Commission and the Proclamation giving publication thereto, of all such terms as imply that such High Commissioner has any authority over His Majesty's subjects falling within the jurisdiction of His Majesty's Government in the Union.

Yours, &c.,

C. T. TE WATER.

10503 A/3. No. 122.

MR. J. H. THOMAS (SECRETARY OF STATE FOR DOMINION AFFAIRS)

to

MR. C. T. TE WATER (HIGH COMMISSIONER FOR THE UNION OF SOUTH AFRICA).

[Answered by No. 123.]

DEAR MR. TE WATER, Downing Street, S.W.1, 28th November, 1933.

In your letter of the 20th September*, you raised, on instructions from His Majesty's Government in the Union, certain questions relating to the title of " High Commissioner for South Africa "; and also as to the wording of Article VII of the Commission of the 10th March, 1931, appointing Sir Herbert Stanley to be High Commissioner for South Africa, of Article III of the Dormant Commission of the same date, and of the Proclamation issued by Admiral Evans on 1st August, 1933.

I understand from your letter that His Majesty's Government in the Union would like, first, an alteration of the High Commissioner's title, so as to remove the possible impression that he is vested with any authority in and over the Union of South Africa and, second, the excision from his Commission, and the other documents referred to, of all such terms as might seem to imply that he has any authority over His Majesty's subjects falling within the jurisdiction of His Majesty's Government in the Union.

We have carefully considered, and are very ready to meet, so far as we can, the Union Government's wishes in this matter.

As regards the first point, the difficulty is to devise a suitable alternative title. The title " High Commissioner for Basutoland, the Bechuanaland Protectorate and Swaziland " would be extremely cumbrous, and would not cover the High Commissioner's other responsibilities in connection with Southern Rhodesia; while to add " and for Southern Rhodesia " would make the title even more cumbrous, and would be open to the criticism of implying that the functions of the High Commissioner in relation to Southern Rhodesia were similar to his functions in relation to Basutoland, etc.

In all the circumstances we have come to the conclusion that the best course will be to change the title, on a new appointment, to that of " His Majesty's High Commissioner *in* South Africa ", thus adopting a form of wording which, on the analogy of the High Commissioner's present title in his other capacity, viz., " High Commissioner *in* the Union of South Africa for His Majesty's Government in the United Kingdom " would be entirely free from any implication such as that which the Union Government wish to avoid.

It would, no doubt, be desirable, when making the change in title, to issue a public statement explaining fully the grounds on which the change was being made, and if His Majesty's Government in the Union should so desire, we should be happy to consult with them as to the terms of such a statement.

As regards the second point, we propose that the same opportunity should be taken to alter the wording of Article VII of the Commission and Article III of the Dormant Commission by substituting, for the words " all other Our loyal subjects in South Africa ", the phrase " all others whom it may concern ", which is used in Lord Clarendon's Commission.

Yours, &c.,

J. H. THOMAS.

10503 A/4. No. 123.

MR. C. T. TE WATER (HIGH COMMISSIONER FOR THE UNION OF SOUTH AFRICA)

to

MR. J. H. THOMAS (SECRETARY OF STATE FOR DOMINION AFFAIRS).

[Answered by No. 124.]

DEAR MR. THOMAS, Trafalgar Square, W.C.2, 8th February, 1934.

With reference to your letter of 28th November†, relating to the title of His Excellency the High Commissioner for the Native Territories of Basutoland, Swaziland and Bechuanaland, and for Southern Rhodesia, I am directed by my Prime Minister to express appreciation of your readiness to meet the Union Government's

* No. 121. † No. 122.

wishes in the matter, but to state that he feels the alternative title proposed, namely " His Majesty's High Commissioner *in* South Africa " does not offer a satisfactory solution to the objections which have been raised.

You will recollect that the view expressed was that the Union Government did not consider the title of " High Commissioner for South Africa " an appropriate one for an officer whose jurisdiction is confined to the three Native Territories and Southern Rhodesia.

It is felt, with regard to your alternative suggestion, that there is no difference in the phrases " in South Africa " and " for South Africa," in that the Union is as much in South Africa as Southern Rhodesia and the Native Protectorates.

If, therefore, the opinion is held that the title now suggested is an indication of the High Commissioner's authority in Southern Rhodesia and in the Protectorates, it must, in the view of the Union Government, equally indicate authority in the Union, and it is just this aspect of the existing title which my Government consider to be inappropriate.

As a solution to the difficulty of devising an alternative title, the Union Government have requested me to suggest, for your consideration some such designation as " His Majesty's High Commissioner for the Native Protectorates in South Africa and for Southern Rhodesia," or, alternatively, " His Majesty's High Commissioner for Southern Rhodesia and for the Native Protectorates in South Africa," which would be quite clear and appropriate.

My Government appreciate your desire to avoid anything cumbrous, but in that regard they feel that neither of the titles suggested above would be more so than the present title of Sir Herbert Stanley in his other capacity, namely, " High Commissioner in the Union of South Africa for His Majesty's Government in the United Kingdom."

They would, moreover, be analogous to the latter title, and any objection that they might imply that the functions in relation to Southern Rhodesia are similar to those in respect of Basutoland, etc., would thus, it is submitted, be met.

But whether this submission is accepted or not, my Government feel strongly that this objection can hardly justify the retention of a title which implies that the High Commissioner has any jurisdiction in the Union, a position which, of course, is contrary to fact.

In the light of the foregoing representations, therefore, I have been requested to express the earnest hope that the United Kingdom Government would be able to give further consideration to the matter.

With regard to the second point mentioned in your letter of 28th November, namely the wording of Article VII of the Commission, and Article III of the Dormant Commission, I am happy to add that the amendments proposed by you meet the position and are acceptable to the Union Government.

Yours, &c.,

C. T. TE WATER.

10503 A/6. No. 124.

MR. J. H. THOMAS (SECRETARY OF STATE FOR DOMINION AFFAIRS)

to

MR. C. T. TE WATER (HIGH COMMISSIONER FOR THE UNION OF SOUTH AFRICA).

DEAR MR. TE WATER, Downing Street, S.W.1, 7th June, 1934.

I am sorry that it has not been possible to send an earlier answer to your letter of the 8th February* relating to the title of the High Commissioner for South Africa, but you will appreciate that the question of a suitable alternative title is by no means an easy one.

In view of the representations made in your letter, the matter has now been further considered in consultation with the High Commissioner and the Prime Minister of Southern Rhodesia.

Neither of the two alternative titles suggested in your letter would be entirely accurate, since Basutoland is a Colony and not a Protectorate, and after a review of all the circumstances, the conclusion has been reached that it is not essential to make any

* No. 123.

reference in the High Commissioner's title to his functions in relation to Southern Rhodesia, and that the best title to adopt, on a new appointment, would be " His Majesty's High Commissioner for Basutoland, the Bechuanaland Protectorate, and Swaziland."

Further, in the circumstances, it would only now seem necessary to announce the change of title when the time comes, and not to make any public statement as to the grounds for the change, unless and until the question is raised. We propose to take action accordingly.

I am glad to note that the amendments which we are proposing to make as regards Article 7 of the Commission and Article 3 of the Dormant Commission meet the views of the Union Government.

I should be grateful if you would communicate the terms of this letter to the Union Government by telegraph.

Yours, &c.,

J. H. THOMAS.

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(3) Notes on the Office of the High Commissioner (Procedure, etc.)

4541/4. No. 125.

NOTES ON THE OFFICE OF HIS MAJESTY'S HIGH COMMISSIONER FOR SOUTH AFRICA*.

(Communicated by Sir Herbert Stanley, October, 1934.)

Procedure.

Since the separation of the Office of His Majesty's High Commissioner for South Africa from that of the Governor-General of the Union, the position of His Majesty's High Commissioner (in his capacity as the Governor of Basutoland, the Bechuanaland Protectorate, and Swaziland, as distinguished from his capacity as the representative in the Union of South Africa of His Majesty's Government in the United Kingdom) has become practically the same as that of a Colonial Governor except that, instead of residing in one or other of the Territories which he governs, he resides in the neighbouring Dominion of the Union. His control over the Territories is exercised through the medium of three Resident Commissioners, one in each Territory, who are in charge of the local administrations and whose headquarters are at Maseru (Basutoland), Mafeking† (Bechuanaland Protectorate), and Mbabane (Swaziland) respectively.

In respect of these three Territories the High Commissioner is vested with the powers and exercises all the functions of government, legislative and executive. He issues local legislation, by means of proclamations (or in the case of statutory regulations by notices) which are promulgated in his *Official Gazette*, imposes taxation, controls expenditure, and makes all appointments.

The functions of the High Commissioner in Southern Rhodesia are concerned with certain matters relating to native affairs as laid down in the Constitution Letters Patent of the Colony and in certain local legislation.

Correspondence with the Dominions Office and the Territories.

All official correspondence with His Majesty's Government in the United Kingdom on the business of the Territories is between the High Commissioner and the Secretary of State. There is also a considerable volume of semi-official correspondence with the Permanent Under-Secretary of State and other officers of the Dominions Office. The Resident Commissioners do not (officially at any rate) communicate direct with the Dominions Office.

* Title shortly to be changed to His Majesty's High Commissioner for Basutoland, the Bechuanaland Protectorate, and Swaziland.

† Mafeking, the headquarters of the Bechuanaland Protectorate Administration, is not within the Protectorate but is a town in the Cape Province of the Union approximately fifteen miles south of the Protectorate border station.

Correspondence with the administrations of the Territories is normally conducted either by despatch or by telegram between the High Commissioner and the Resident Commissioners. On minor matters, communications occasionally pass between the Administrative Secretary to the High Commissioner and the Resident Commissioners, or the Government Secretaries of the Territories.

Despatches are written in the first person, beginning " I have the honour to . . . ", and bear the High Commissioner's signature*. In office minutes and local despatches and letters addressed to him in his capacity as High Commissioner for South Africa, and in letters written on his behalf in that capacity, the designation of " Excellency " is used.

Native Chiefs.

On matters of importance the High Commissioner occasionally writes direct to and receives letters from native chiefs. Any such letters are transmitted through the Resident Commissioner. Such letters are written in the first person, beginning " My Friend " and concluding " I am, Your friend . . . . High Commissioner."

Ordinarily communications between the High Commissioner and native chiefs are transmitted by message through the Resident Commissioner. It is recognized that any chief may address the High Commissioner personally so long as his letter is forwarded through the Resident Commissioner. The reply may take the form of a letter under the High Commissioner's hand or be transmitted as a message through the Resident Commissioner. The latter procedure is usually adopted, but there is no definite rule.

The paramount chiefs in Basutoland and Swaziland and chiefs of tribes in the Bechuanaland Protectorate may ask for an interview with the High Commissioner. It is usual when such a request is made, for the nature of the business to be indicated beforehand. The Resident Commissioner of the Territory concerned is ordinarily present at any such official interview, and the Administrative Secretary is in attendance.

The High Commissioner shakes hands with a chief at the commencement and termination of an interview, but not with a chief's followers or advisers who may accompany him. As a rule the chief only speaks to, and is spoken to by, the High Commissioner.

It has never been the practice to allow chiefs on such occasions to be accompanied by lawyers.

The High Commissioner may receive a chief privately, and at such private interview the High Commissioner is not usually attended by an officer, nor the chief by any follower.

Relations with the Union Government.

The recognized official channel of communication between the Territories and the Union Government is by correspondence between the Administrative Secretary to the High Commissioner, who writes " by direction of the High Commissioner ", and the Union Secretary for External Affairs. This channel is used in all the more important matters. In practice, however, the heads of Union Departments and the Administrative Secretary frequently communicate with each other direct. The administrations of the Territories also communicate on matters of ordinary business direct with Union Government Departments, e.g., the Government Secretaries with the Union Secretary for Native Affairs and other heads of Union Departments, the Principal Veterinary Officers with the Union Director of Veterinary Services, the Principal Medical Officers with the Union Secretary for Public Health, and so on.

The High Commissioner *for South Africa* does not communicate officially over his own signature with any Union Minister or Department of State, though he may occasionally write an informal letter to the Prime Minister or other Ministers of the Union on matters connected with the Territories. This procedure however is not often adopted, though it is sometimes useful when it is desired to secure the personal intervention of the Minister.

Other Neighbouring Governments.

Correspondence with the Government of Southern Rhodesia and other British Governments in Africa, e.g., Northern Rhodesia, Nyasaland, passes between the High Commissioner and the Governor of the colony or territory. The High Commissioner also communicates direct with heads of foreign governments, e.g., the Portuguese province of Mozambique, Angola, and the Belgian Congo.

* In the case of routine despatches and in the temporary absence of the High Commissioner, the signature is stamped.

Correspondence with the Union Mandated Territory of South West Africa is normally conducted through the Union Department of External Affairs, but the Secretary for South West Africa at Windhoek and the Administrative Secretary also communicate with each other direct.

Visits to the Territories.

The High Commissioner usually endeavours, so far as his other engagements permit, to visit each of the three Territories at least once a year.

The Resident Commissioners visit the High Commissioner at Cape Town or Pretoria for purposes of consultation as and when occasion may arise. Conferences of the High Commissioner and the Resident Commissioners were held at Pretoria in 1931 and 1932 and it was hoped to hold such conferences annually. No such conference was held in 1933, owing to Sir Herbert Stanley's absence from South Africa, and it will probably not be possible to hold a conference in 1934.

Ceremonial.

On assumption of office the High Commissioner notifies the Governor-General of the Union, the Governors of other adjacent British colonies, &c., and neighbouring foreign territories by despatch or telegram. A notification to the Union Government is conveyed by letter from the Administrative Secretary to the Secretary for External Affairs.

In the Union the High Commissioner is only accorded precedence as a representative of His Majesty, i.e., next to the Governor-General, on special occasions such as a King's Birthday dinner at Government House, otherwise he normally takes precedence in the Union in his capacity as High Commissioner for the United Kingdom.

The High Commissioner's official return visit to the Naval Commander-in-Chief at Simonstown was paid by Sir Herbert Stanley in 1931 in his capacity not as High Commissioner for South Africa but as High Commissioner for the United Kingdom, and in morning dress—not uniform, and at Admiralty House instead of the flagship. It was understood, however, that this was not to be regarded as a precedent necessarily binding for the future.

The Naval Commander-in-Chief who at present holds the Dormant Commission, usually keeps the High Commissioner informed of his intended movements.

Dress, &c.

The High Commissioner wears his blue Governor's uniform at any large ceremonial meeting with native chiefs within the Territories. In the Bechuanaland Protectorate, except on the most important occasions, he wears white tropical uniform, but with a plume on the helmet and with the curved sword which forms part of the blue uniform. (But for these two points of difference his white uniform would be barely distinguishable from those worn by the Resident Commissioner and such very few local officers as are in possession of uniform.) In Swaziland white uniform would be appropriate except on the most important occasions, though if the Resident Commissioner and other local officers had no white uniform but only the ordinary blue Civil Service uniform, the High Commissioner might think it desirable to wear his blue Governor's uniform where otherwise he might have worn white. In Basutoland white uniform has not hitherto been worn but, subject to what has been said above in regard to Swaziland, there is no reason why white should not be worn (in the summer months) on minor ceremonial occasions.

Since 1910, when the present blue uniforms for Governors-General and Governors were first introduced, no High Commissioner has worn blue Civil Service uniform in the Territories. Prince Arthur of Connaught and Lord Athlone wore the military uniform (scarlet, blue or white, according to the occasion) of a Major-General. Lord Gladstone and Lord Buxton wore the blue Governor-General's uniform (which differs from the blue Governor's uniform only by the addition of silver aiguillettes). Neither of them, so far as can be remembered, wore (or possessed) white uniform. The present High Commissioner has worn blue Governor's uniform or white uniform according to the occasion.

On visits to native villages in the course of a tour ordinary country clothes are normally worn, but there are exceptions, as for example on the occasion of a first visit to the Bamangwato chief and tribe at Serowe. When arranging a tour it is usual to consult with the Resident Commissioner as to the occasions, if any, on which uniform (blue or white) should be worn, and also as to any occasions on which morning dress and a top hat would be desirable. (Such morning dress and hat can be either black or grey at the High Commissioner's own discretion. His decision as to the colour would affect himself only.)

In the Territories morning dress would be worn on very rare occasions, e.g., a garden party at the Residency, or an important foundation-stone laying or a memorial service, or Armistice Day service.

At ordinary meetings with local European residents, luncheon parties, receptions of deputations, &c., country clothes are usually worn, but there might be occasions (as to which the Resident Commissioner could advise) on which morning dress would be preferable. In opening agricultural shows, country clothes are invariably worn.

At dinner parties, dances and concerts or theatricals in the Territories (including Mafeking) the High Commissioner wears full evening dress with decorations. Occasionally, however, e.g., at some agricultural show dinners, the High Commissioner agrees to appear in short coat and black tie or even in country clothes. At dinner in the Territories and at Mafeking the King's health is proposed by the High Commissioner, but when the Resident Commissioner is host, the High Commissioner usually asks him to propose the toast.

At interviews with native chiefs in the High Commissioner's Office at either Cape Town or Pretoria country clothes (preferably a dark suit) would usually be worn.

It is very desirable that the High Commissioner in visiting any of his Territories, should be attended by a personal staff officer, private secretary or aide-de-camp. Such officer, if a civilian, would wear uniform when the High Commissioner wears it, and morning dress or country clothes when his chief is so attired; if a military officer, he would wear full dress uniform when the High Commissioner wears his blue Governor's uniform, and undress uniform (viz., blue frock coat and service cap or helmet) when the High Commissioner wears white uniform or morning dress. When the High Commissioner is in country clothes, a military staff officer, would normally wear country clothes also, but might on rather special occasions wear khaki uniform. In the evenings, when the High Commissioner wears decorations, his staff officer should wear the staff evening coat (viz., with blue facings).

The attendance of the Administrative Secretary during the High Commissioner's tours in the Territories is not obligatory. Its expediency depends mainly on the extent to which the High Commissioner is familiar with the details of any official matters likely to come up for discussion, but there is no reason why the Administrative Secretary should not be in attendance always, if he can be spared from the office during the High Commissioner's absence.

When arriving in one of his Territories, travelling in it, or departing from it, by train (i.e., when the railway station in question is within the Territory), the High Commissioner should travel in a private saloon. When the railway station is not within the Territory (e.g., the terminus from which he would usually motor to Swaziland) he can please himself. The point is that the natives should not see him emerging from an ordinary compartment.

MINERALS

(1) Bakwena Reserve—Agreement with Mr. P. Dawson for prospecting rights

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10141/244. No. 126.

DESPATCH

from

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE AND SWAZILAND.

(Received 8th July, 1935.)

[*Answered by No. 129.*]

(Bechuanaland Protectorate.)

(No. 396.)

SIR, Pretoria, 28th June, 1935.

I have the honour to transmit herewith a copy of a despatch* from the Acting Resident Commissioner of the Bechuanaland Protectorate submitting a copy of an Agreement, dated the 9th May, which has been entered into between Kgari Sechele, Chief of the Bakwena, and Mr. P. Dawson, by which the latter is granted prospecting rights for a period of two years over an area of 20 square miles in the Bakwena Reserve, with an option to select an area of approximately one square mile for mining purposes.

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* Not printed.

2. I have consulted my Legal Adviser upon the terms of the draft Agreement, and I attach a copy of a minute which he has furnished*. The minor amendment which he has suggested is shown in red ink in the attached copy of the Agreement.

3. As regards the rights held by the British South Africa Company in the Bakwena Reserve, these were abandoned last year (see Sir Herbert Stanley's despatch No. 884 of the 31st October, 1934†) and it accordingly appears to be necessary, if no contrary procedure has been arrived at in the recent discussions with the Company, to enquire whether, in view of their preferential rights, they would have any objection to approval being given to the Agreement by the Secretary of State in terms of the Mining Law.

4. I shall be obliged therefore in the event of your approving of the terms of the draft Agreement, if the consent of the British South Africa Company can be obtained should it still be required.

I have, &c.,
W. H. CLARK,
High Commissioner.

10141/244. No. 127.

SIR EDWARD HARDING (DOMINIONS OFFICE)

to

MR. D. O. MALCOLM (BRITISH SOUTH AFRICA COMPANY).

[Answered by No. 128.]

MY DEAR MALCOLM, 1st August, 1935.

The High Commissioner for Basutoland, the Bechuanaland Protectorate, and Swaziland has submitted for the Secretary of State's approval the enclosed agreement‡ between the Chief of the Bakwena and a Mr. P. Dawson, by which the latter is granted prospecting rights for a period of two years over an area in the Bakwena Reserve with an option to select an area of approximately one square mile for mining purposes.

The Secretary of State proposes to approve the agreement.

As you know, according to the advice we have received there is no obligation to consult the British South Africa Company in regard to such an agreement now that they have abandoned their Concession in that reserve, but as, for reasons of which you are aware, we have not yet replied to the Company's memorandum on this point, we feel it desirable that you should know of the proposal.

I hope we may assume that the Company will not raise any objections.

Yours, &c.,
E. J. HARDING.

10141/244. No. 128.

MR. C. HELY HUTCHINSON (BRITISH SOUTH AFRICA COMPANY)

to

SIR EDWARD HARDING (DOMINIONS OFFICE).

DEAR HARDING, 2, London Wall Buildings, E.C.2, 6th August, 1935.

I have your letter of 1st August§ addressed to Malcolm enclosing a copy of an agreement between the Chief of the Bakwena and a Mr. P. Dawson, relating to prospecting rights over a part of the Bakwena Reserve. Malcolm is away on the continent.

You will, of course, appreciate that until the nature of the Company's rights in the Protectorate has been considered, in the manner suggested in the memorandum of the 1st August, 1934‖, and settled between us, or alternatively, until the surrender of those rights, suggested in the shorter of the two confidential letters addressed to you by the British South Africa Company on the 1st July, 1935¶, has actually been made, the British South Africa Company must continue to take the view that the nature of those

* Not printed. † 10141/215: not printed. ‡ Not printed here. § No. 127.
‖ 10141/204: not printed. ¶ No. 103.

rights is as set out in the memorandum of the 3rd August, 1934, a copy of which was enclosed in Malcolm's letter to you of the 7th August, 1934*.

As, however, the British South Africa Company would have declined the grant proposed to be made to Mr. P. Dawson if such a grant had ever been offered to it on the terms set out in the agreement enclosed with your letter, you will be safe in assuming that the British South Africa Company will not raise any objection either now or later if the Secretary of State should approve that particular agreement.

Yours, &c.,
C. HELY HUTCHINSON.

10141/244. No. 129.

TELEGRAM

to

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE AND SWAZILAND.

(Sent 12 noon, 13th August, 1935.)

No. 136. Your despatch No. 396 28th June† agreement approved.

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(2) Balkis Company—Liability of the Company to pay the Bechuanaland Administration an annual rental

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10141/185. No. 130.

DESPATCH

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 6th March, 1934.)

(Bechuanaland Protectorate.)
(Confidential.) (No. 128.)

SIR, High Commissioner's Office, Cape Town, 16th February, 1934.

With reference to my despatch confidential No. 80 of the 26th January‡, I have the honour to enclose, for your information, a copy of the documents on the subject of the liability of the Balkis Company to pay annual rental to the Bechuanaland Protectorate Administration in respect of their prospecting rights under their concession.

I have, &c.,
H. J. STANLEY,
High Commissioner.

Enclosure 1 in No. 130.

SIR, Balkis Limited, 274, Gresham House, E.C.2, 11th January, 1934.

Your letter of the 17th November last addressed to Mr. D. P. C. Blair of Johannesburg has been forwarded to us for our attention.

My Company do not now desire to renew the application made by them in March, 1926, for the grant of prospecting and mining rights over an area of Crown lands on the Bechuanaland Protectorate.

My Board wish me to express their thanks to you for bringing the matter to their attention.

I am, &c.,
N. J. HEARN,
Secretary.

The Administrative Secretary,
High Commissioner's Office, Cape Town.

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* 10141/204: not printed. † No. 126. ‡ No. 10141/183: not printed.

Enclosure 2 in No. 130.

(Bechuanaland Protectorate.)
(Confidential.) (No. 297.)

High Commissioner's Office, Cape Town,
16th February, 1934.

SIR,

With reference to my despatch No. 249 of the 29th January regarding the extent of the liability of Balkis Limited to pay annual rental to the Bechuanaland Protectorate Administration in respect of their prospecting rights under their concessions, I have the honour to transmit herewith a copy of a letter from the London office of the Company stating that they do not now desire to renew the application made by them in March, 1926 for the grant of prospecting and mining rights over an area of Crown land in the Bechuanaland Protectorate.

2. I think that, if you agree, steps might now be taken, in accordance with the suggestion made in the Secretary of State's despatch confidential No. 409 of the 23rd November, 1933* (see my despatch confidential No. 2982 of the 28th December) to negotiate a settlement of the question of the rental payable by the Company based on (*a*) the surrender by the Company of its claims in the Bamalete Reserve and (*b*) a waiver by the Administration of their claim for a double rental in respect of their two concessions, on the understanding that, if and when the Company exercise their right to select a mining area or areas under one of the concessions, they will continue to be liable to pay the existing rental on the remaining concession until they have completed the selection of areas to which they are entitled in respect of the two concessions, whereupon rental will only be payable, under section 32 of the Mines and Minerals Proclamation, in respect of the selected areas.

3. I should be glad if you would approach the Balkis Company on these lines. It might perhaps be convenient if any such communication were to be addressed to the local Agent of the Company, Mr. D. P. C. Blair at Johannesburg, who might be told of the nature of the enclosed reply received from his London office.

I have, &c.,
H. J. STANLEY,
High Commissioner.

His Honour
The Resident Commissioner
of the Bechuanaland Protectorate.

10141/190.

No. 131.

DESPATCH
from
HIGH COMMISSIONER, SOUTH AFRICA.
(Received 7th May, 1934.)

(Bechuanaland Protectorate.)
(Confidential.)
(No. 303.)

High Commissioner's Office, Cape Town,
20th April, 1934.

SIR,

With reference to my confidential despatch No. 128 of 16th February†, I have the honour to enclose, for your information, a copy of the documents on the subject of the rental payable by Balkis Limited in respect of prospecting rights under mineral concessions in the Bechuanaland Protectorate.

I have, &c.,
H. J. STANLEY,
High Commissioner.

Enclosure 1 in No. 131.

(Confidential.)
(No. 5277/1.)

Resident Commissioner's Office, Mafeking,
26th February, 1934.

SIR,

I have the honour to acknowledge the receipt of Your Excellency's confidential despatch No. 297 of the 16th February on the subject of the extent of the liability of Balkis Limited to pay rental to this Administration in respect of its two mineral concessions.

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* No. 72 in Dominions (South African) No. 5.

† No. 130.

2. I agree that steps should now be taken in accordance with the suggestion made in the Secretary of State's despatch (confidential) No. 409 of the 23rd November, 1933, but before doing so I submit for Your Excellency's consideration that the wording of the latter part of paragraph 3 of the Secretary of State's confidential despatch, which reads:—

> "(*b*) A waiver by the Administration of their claim for a double rental in respect of their two concessions, on the understanding that if and when the Company exercise their right to select a mining area or areas under one of the concessions, they will continue to be liable to pay the existing rental on the remaining concession until they have completed the selection of areas to which they are entitled in respect of the two concessions, whereupon rental will only be payable, under section 32 of the Mines and Minerals Proclamation, in respect of the selected areas."

might be misconstrued by the Company.

3. Section 32 of the Mines and Minerals Proclamation reads as follows:—

> "32. The rent prescribed under section *thirty-one* in respect of the Mineral Concessions in the Bangwaketsi and Bakwena Reserves registered in accordance with section *four* (1) hereof shall be payable in respect of the whole of the original area of the concession from the date of the application of this Proclamation to the areas comprised within all or any of these concessions for a period of *five years* and thereafter until the concessionaires have selected and pegged out the special areas to which they are entitled under the concession whereupon rental will only be payable in respect of the selected areas."

The meaning of this Section is therefore that if the Company exercise their right to select a mining area or areas under their Concessions at any time within five years from the date the Proclamation has been applied to the Bangwaketsi Reserve, the Company would still be liable to pay the existing rental on their Concessions until the period of five years has expired. I consider this is the correct interpretation of Section 32.

4. If, however, negotiations with the Company are opened on the basis of the Secretary of State's despatch Confidential referred to, it would be possible for the Company to select their mining areas at once and thereafter they would apparently only be liable for rent at the rate of 1*s.* per square mile of the selected areas. In such a case the effect would be that the Company would pay £40 (that is, 800 square miles at 1*s.* per square mile) instead of £459 15*s.* 0*d.* per annum for the unexpired period of five years from the time the Proclamation has been applied to the Bangwaketsi Reserve.

5. I should be grateful if Your Excellency would inform me whether you agree with the contention advanced, and, if so, whether I may negotiate with the Company on the lines indicated in paragraph 3 of this despatch.

I have, &c.,
R. REILLY,
In the absence and by direction of the
Resident Commissioner.

His Excellency
The High Commissioner,
Cape Town.

Enclosure 2 in No. 131.

(Bechuanaland Protectorate.)
(Confidential.)
(No. 635.)

High Commissioner's Office, Cape Town,
4th April, 1934.

SIR,

I have the honour to acknowledge the receipt of your despatch Confidential No. 5277/1 of the 26th February regarding the proposed negotiations with the Balkis Company for a settlement of the question of the rental payable in respect of their two mineral concessions.

2. I have consulted my Legal Adviser upon the point raised in your despatch as to the wording of the proposed offer to the Company of a waiver by the Administration of their claim for a double rental in respect of the two concessions having regard to the provisions of section 32 of the Mines and Minerals Proclamation, and he has suggested that the difficulty might be overcome if any offer to the Company on the lines suggested by the Secretary of State were made on the understanding that it would be "subject to so much of section 32 of the Bechuanaland Protectorate Mines and Minerals Proclamation No. 33 of 1932 as provides for payment of rent for a period of five years".

3. In this context Mr. Blackwell has expressed the opinion that if and when an agreement is arrived at, it should be embodied in a Proclamation, as taxes due to the Crown cannot be waived administratively. This point might receive further consideration later on.

I have, &c.,

H. J. STANLEY,

High Commissioner.

His Honour
The Resident Commissioner
of the Bechuanaland Protectorate.

10141/213. No. 132.

DESPATCH

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 13th November, 1934.)

(Bechuanaland Protectorate.)

(Confidential.) (No. 852.) High Commissioner's Office, Pretoria,
23rd October, 1934.

SIR,

With reference to my despatch No. 851 of to-day* regarding an Agreement which has been entered into between Messrs. Balkis Limited and Mr. J. T. H. W. Burmester, by which the latter is granted certain prospecting and mining rights in the Bangwaketsi Reserve, I have the honour to refer to my confidential despatch No. 303 of the 20th April†, and previous correspondence on the subject of the prospecting rights held by the Company under mineral concessions in the Bechuanaland Protectorate.

2. As regards the Balkis Company's rights in the Bamalete Reserve, I enclose, for your information, a copy of a letter which, following upon the receipt by him of my despatch No. 635 of the 4th April‡, the Resident Commissioner caused to be addressed to the Company's local representative, together with a copy of Mr. Blair's reply indicating that the Company are not prepared to release the Bamalete Reserve from the operation of the concessions.

3. The Resident Commissioner has accordingly recommended in his despatch, of which a copy is attached, that the Mines and Minerals Proclamation should be applied to that Reserve, but before this is done it would appear to be necessary for the Chief to be consulted (see paragraph 3 of your confidential despatch No. 170 of the 12th May, 1933§), and I have asked Colonel Rey whether such consultation has been effected.

I have, &c.,

H. J. STANLEY,

High Commissioner.

Enclosure 1 in No. 132.

Resident Commissioner's Office, Mafeking, C.P.,
10th April, 1934.

SIR,

With reference to your letter of the 20th ultimo and previous correspondence regarding the rentals payable by Messrs. Balkis Limited, in respect of its two Mineral Concessions, I have to inform you that the matter has been carefully considered by His Excellency the High Commissioner in consultation with the Secretary of State, and that the Administration is now advised that in terms of Sections 31 and 32 of the Bechuanaland Protectorate Mines and Minerals Proclamation (No. 33 of 1932) the Crown is legally entitled to yearly rentals of the amounts specified in my letter to you of the 24th March, 1933, viz., £459 15*s.* in respect of each Concession.

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* No. 10141/212: not printed. † No. 131. ‡ Enclosure 2 in No. 131.
§ No. 60 in Dominions (South African) No. 5.

On the assumption that the area affected by the Concessions includes the Bamalete Reserve—although this is disputed by the Chief—and as it is desired that the Reserve should not be subject to the Concessions, the Administration would not wish to press its claim for the full amounts of the rentals to which it is advised it is legally entitled; provided, however, it be agreed by Messrs. Balkis Limited, that the rights under the concessions shall not extend to the Bamalete Reserve.

Should Messrs. Balkis Limited, find itself able to agree with the above suggestion the Administration in return would be prepared to reduce its claim for rentals in respect of both Concessions to the sum of £459 15*s.* per annum on the understanding, however, that this offer would be subject to so much of Section 32 of the Bechuanaland Protectorate Mines and Minerals Proclamation (No. 33 of 1932) as provides for payment of rent for a period of five years.

I am, &c.,

R. REILLY,

Assistant Resident Commissioner.

D. P. C. Blair, Esquire,
P.O. Box 1917,
Johannesburg.

Enclosure 2 in No. 132.

23, Aegis Buildings, Loveday Street, Johannesburg,
17th August, 1934.

SIR,

Balkis Limited—Mineral Concessions.

I am in receipt of your letter of the 15th inst., and have to inform you that the Balkis Limited are not prepared to release the Bamalete Reserve from the operation of the Concessions.

I had a telephone conversation with the Chairman of the Company in London last Friday.

I am, &c.,

D. P. C. BLAIR,

For Balkis Limited.

The Resident Commissioner,
Bechuanaland Protectorate,
Mafeking.

Enclosure 3 in No. 132.

Resident Commissioner's Office, Mafeking,
5th September, 1934.

SIR,

With reference to Your Excellency's despatch confidential No. 635 of the 16th June and my reply thereto of the 20th June on the subject of the rentals payable by Balkis Limited in respect of its Mineral Concessions in the Bechuanaland Protectorate, I have the honour to enclose herewith a copy of a further communication on this matter received from the Company's Local Agent (Mr. D. P. C. Blair) informing the Administration that the Company is not prepared to release the Bamalete Reserve from the operation of these Concessions.

2. I would also inform Your Excellency that advice has since been received from the Mining Commissioners of the Mining Districts of the Bangwaketsi Reserve and Lobatsi Block that the rentals due for the first year on both concessions amounting to £919 19*s.* have now been paid, being in respect of the portions of the Concession area falling within these Districts, and that the Company's Local Agent has stated that the rentals for the current year will be paid so soon as he receives funds from London.

3. In view of the Company's decision, and seeing that application has been made to the Registrar of Deeds for the registration of an Agreement under which the Company grants certain prospecting rights over its concession area to a Mr. John Burmester, together with a right to purchase the full rights conferred under the Concessions, (see the Administrative Secretary's semi-official letter No. 918 of the 4th June), I shall be grateful if your Excellency will consider the question of applying the Mines and Minerals

Proclamation, 1932, to the Bamalete Reserve. I consider it advisable that this should be done, and, if Your Excellency concurs, the usual notice will be submitted for your approval and publication.

4. The matter of the registration of the Agreement above mentioned is being delayed pending compliance with certain requirements of the Registrar of Deeds.

I have, &c.,

R. REILLY,

For Resident Commissioner.

His Excellency
The High Commissioner,
Pretoria.

10141/228. No. 133.

DESPATCH

from

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received 4th February, 1935.)

(Bechuanaland Protectorate.)
(No. 45.)

SIR, High Commissioner's Office, Capetown, 18th January, 1935.

With reference to Sir Herbert Stanley's despatch No. 1001 of the 27th November*, regarding an application on behalf of Balkis Limited for the issue of a Crown grant to prospect for and win diamonds in the Bangwaketsi Reserve, I have the honour to enclose a copy of a further minute by my Legal Adviser containing his considered views on the question as to whether or not the holder of a registered mineral concession is subject to the provisions of section 39 of the Mines and Minerals Proclamation, 1932, and bound therefore to obtain a Crown grant in order to enable him to prospect for or win diamonds on a Native Reserve.

2. After Sir Cecil Fforde's minute was written, a despatch, of which a copy is enclosed, was received from the Resident Commissioner of the Bechuanaland Protectorate, forwarding an opinion by Mr. P. Millin, K.C., and Mr. Advocate W. Oshry, which had been supplied to the Registrar of Deeds by the courtesy of Mr. John Burmester's Attorneys. It will be seen that the conclusions arrived at by Messrs. Millin and Oshry are practically the same as those of my Legal Adviser, viz., that it is not necessary under the terms of the Proclamation for the duly registered holder of a mineral concession to apply for and obtain a Crown grant to prospect for and win diamonds.

3. In addition to the rights held under concession by Messrs. Balkis Limited in the Bangwaketsi Reserve, their rights probably extend also to the Bamalete Reserve, and it seems unlikely, in view of the enclosed opinion from the Company's Counsel, that the Company will apply for a Crown grant in the event of their proposing to prospect for diamonds in that area. I understand also that a mineral concession, viz., that held by the Linchwe Concession Company, Ltd., is in force in respect of an area of 100 square miles situate in the Bakgatla Reserve.

4. I gather that Sir Herbert Stanley intended (and that he was under the impression that this was provided by the Proclamation), to prohibit prospecting for and winning diamonds in any part of the Protectorate (other than " private lands ") except under the authority of a Crown grant, but as no mineral concessions (except, of course, the Tati Concession) other than those mentioned above are now in existence, he did not consider it necessary, even if it were deemed legitimate, to amend the Proclamation so as to impose the restriction upon areas in a Native Reserve which are now actually subject to a mineral concession.

5. The point, however, should be borne in mind for consideration in the event of any future mineral concession being submitted for your sanction and approval.

I have, &c.,

W. H. CLARK,

High Commissioner.

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* No. 10141/221: not printed.

Enclosure 1 in No. 133.

MINUTE.

Having again examined the Mines and Minerals Proclamation, 1932, I am confirmed in the opinion previously expressed that clause 39 of the Proclamation does not apply in the case of lands which are subject to a registered mineral concession.

Sub-clause 2 of clause 39 prohibits a person prospecting for or winning diamonds on Crown lands or Native Reserves unless he is the holder of a Crown grant under clause 35 authorizing him to do so. But the terms of the Crown grant issued under clause 35 are inconsistent with the rights of the holder of a mineral concession, which are controlled by the provisions of Part III of the Proclamation. For example, under clause 35(3) (*b*) the holder of the Crown grant is only entitled to peg such number of claims as may be prescribed in the grant, whereas under clause 29 (3) there is no limit to the number of claims which the holder of a mineral concession may peg. Again clause 35 (4) provides, *inter alia*, that the obligation to pay royalties under clause 28 (1) shall apply to the holders of claims on Crown grants, while clause 28 (1) expressly excludes the holders of claims in mineral concessions from that liability.

The view that clause 39 does not apply to the holder of a mineral concession is further supported by the provisions of clause 42 (1), which confers upon the holder of any registered mineral concession, in respect of alluvial diamonds and diamond pipes, the rights and obligations prescribed in clauses 40 and 41, but without limitation as to the number of claims which he or his servants may peg and acquire.

The rights and obligations of the holder of a mineral concession which has been duly registered are specifically dealt with in Part III of the Proclamation under the heading " Prospecting and Mining on Land Held Under Mineral Concession." Crown grants are dealt with under Part IV, while Part V is concerned with prospecting and mining on private lands. Then comes Part VI, which is headed " Prospecting and Mining for Diamonds ", in which, as I have pointed out, a distinction is made between the rights and obligations of the holder of a Crown grant, and those regulating a registered mineral concessionaire.

Legislation involving penal consequences must be strictly construed, and, where there is any doubt, should be construed in favour of the subject rather than the Crown where a prosecution for an infringement of its provisions is prescribed. For the reasons I have given, I am of opinion that the provisions of sub-clause 2 of clause 39 of the Mines and Minerals Proclamation, 1932, should only be construed as applying to Crown lands, or to areas in a Native Reserve which are not subject to a mineral concession.

CECIL FFORDE,

30th November, 1934.

Enclosure 2 in No. 133.

(No. 7117.)

SIR, Resident Commissioner's Office, Mafeking, 29th November, 1934.

With reference to Your Excellency's despatch No. 2794 of the 11th October, regarding the question as to whether, in terms of the Mines and Minerals Proclamation, 1932, it is necessary for the registered holder of a mineral concession to procure a Crown grant before he may exercise his right under such concession to prospect for and win diamonds within a Native Reserve, I have the honour to enclose a copy of an opinion by Mr. P. Millin, K.C., and Advocate W. Oshry, as supplied to the Registrar of Deeds by the courtesy of Mr. John Burmester's Attorneys.

2. In referring to Sir Cecil Fforde's minute dated 5th October, on this question, a copy of which was transmitted with Your Excellency's despatch above mentioned, Your Excellency has observed that for certain reasons you would wish to consult further with your Legal Adviser, and it is thought therefore that the enclosed opinion of Counsel may be of interest in this connexion.

I have, &c.,

C. F. REY,

Resident Commissioner.

His Excellency
The High Commissioner,
Pretoria.

EX PARTE. JOHN BURMESTER.

Opinion.

The consultant in this matter is the holder of an option obtained from Messrs. Balkis Ltd., who are the registered holders of certain mineral concessions in the Bangwaketsi Native Reserve, Bechuanaland Protectorate. In terms of their mineral concession, Messrs. Balkis Ltd. have been given the exclusive right to prospect for precious stones and precious or other minerals throughout the Reserve in question, subject to certain terms and conditions which are not relevant to the present enquiry. The consultant wishes to be advised whether it is necessary for Messrs. Balkis Ltd. as the registered holders of the mineral concessions in question, to apply for and obtain a Crown grant for the purpose of prospecting for and winning diamonds in view of the provisions of Proclamation No. 33 of 1932 promulgated in the Bechuanaland Protectorate on the 11th day of August, 1932, and more particularly in view of the provisions of section 39 of the Proclamation.

Section 39 (1) of the Proclamation is in the following terms:—

> " Except as provided in sub-section (2) hereof no person shall prospect for or win diamonds on any land unless the High Commissioner has by notice in the *Gazette* declared such land open for prospecting or winning diamonds ";

And sub-section (2) provides that

> " No person shall prospect for or win diamonds on any Crown land or Native Reserve unless he is the holder of a Crown grant issued under section 35 authorizing him to do so."

Although section 39 is general and in its terms wide enough to cover the case even of a mineral concession such as is held by Balkis Ltd., a reference to other sections in the Proclamation would seem to indicate that the general effect of section 39 has to be modified in certain cases, on the well-known principle that where there are specific provisions in a statute and also general ones and the latter conflict with the former, the specific provisions are read as exceptions from the general ones (*vide Barry v. Union Government* 1912, O.P.D. 114, *Pretoria Municipal Council v. Wan Chek* 16P. H.K. 32, *Rex v. Gwantshu* 1931, E.D.L. 29), and that it is not necessary for the duly registered holder of a mineral concession to apply for and obtain a Crown grant to prospect for and win diamonds.

The Proclamation is divided into a number of different sections or parts. Part I is headed " Preliminary." Part II deals with " Prospecting and mining for minerals *except diamonds* on Crown and *land not held under mineral* concession." Part III deals specially with " Prospecting and mining on land held under mineral concession." Part IV has reference to " Crown grants." Part V deals with " Prospecting and mining on Private Lands," and Part VI deals specially with " Prospecting and mining for diamonds."

A reference to section 29 (1) of the Proclamation under Part III, shows that the holder of a duly registered mineral concession is in a very favourable position in that he is given the sole right to prospect, to peg claims or acquire rights. Section 29 (2) of the Proclamation goes even further and treats the holder of a mineral concession on the same footing as if the holder were a person operating on land thrown open to public prospecting under section 6 of the Proclamation, save that the holder of a mineral concession is in this more favourable position that there is no limitation as to the number of claims such holder may acquire.

For what is meant by " mineral concession ", *vide* section 2 (*m*) of the Proclamation, where mineral concession is defined as " a right to minerals or mineral product on any land ", and " mineral " is defined under section 2 (1) as " any constituent of the crust of the earth ", and then the sub-section deals with certain exclusionary items which are not relevant to the present enquiry. Finally in terms of the schedule to the Proclamation under the heading of " Regulations " we find that " mining title " includes " mineral concessions ".

The effect therefore of section 29 of the Proclamation as read with the definition clauses referred to above would seem to be that there is no limitation whatsoever imposed upon the holder of a mineral concession in so far as mining for diamonds is concerned. It would seem further that having regard to the Proclamation as a whole, three distinct cases are contemplated.

(*a*) Mining for minerals after land thrown open for prospecting in terms of section 6;
(*b*) mining carried on by the holder of a mineral concession; and
(*c*) mining carried on by the holder of a Crown grant.

A consideration of section 35, which deals with Crown grants, would seem to strengthen the view that a Crown grant is not necessary for the purpose of prospecting for and winning diamonds in the case of a holder of a mineral concession. Section 35 (1) specially provides that the High Commissioner cannot confer a Crown grant which would have the effect of affecting prior rights existing at the date of taking effect of the Proclamation. Further, sub-section (3) of the same section provides that a Crown grant *shall* be subject to the following conditions, viz.,

(*a*) the payment of royalties in accordance with section 28, and
(*b*) a limitation as to the number of claims which may be pegged.

So far as (*a*) is concerned, a reference to section 28 makes it clear that the royalties to be paid in terms of section 28 do not apply to claims in mineral concessions, and so far as (*b*) is concerned, sections 29 (3) and 42 (1) make it equally clear that there is no limitation to the number of claims which may be pegged by the holder of a mineral concession.

Finally section (4) of section 35 would seem to show that in the case of Native Reserves, subject to a mineral concession, no question of a Crown grant can arise.

It would seem, therefore, that section 35, which deals with the conferring of Crown grants, has no application to the case of a holder of a mineral concession.

Further support for the view that it is not necessary for the holder of a mineral concession to obtain a Crown grant for the purpose of mining diamonds is to be found in sections 42 and 43 of the Proclamation. Section 42 (1) refers to diamonds " to which his *concession* may entitle him ", and the section goes on to the effect that the holder of a mineral concession shall have the rights and obligations prescribed in sections 40 and 41. Section 40 deals with the rights of the holder of a Crown grant, and section 41 with the obligations of the holder of such a grant. That

is to say, section 42 treats the holder of a mineral concession as a person who has rights so far as mining for diamonds is concerned apart from any question of a Crown grant, and sub-section (2) of section 42 confirms this view because the sub-section would be necessary if the holder of a mineral concession had to obtain a Crown grant before mining for diamonds in view of the provisions of section 35 (3) which empowers the High Commissioner to incorporate any conditions in a Crown grant which the Commissioner may deem necessary.

Finally, section 43 refers to diamonds won in any Native Reserve, *not subject to a mineral concession*, which has either

(*a*) been thrown open for prospecting under section (6), or
(*b*) in respect of which a Crown grant has been issued under the provisions of section 35 (4).

This section, too, seems to indicate the special position of the holder of a mineral concession in a Native Reserve, and tends to show that there is no necessity for a Crown grant in the case of such a holder.

In conclusion when one considers the policy of the Proclamation as a whole and the manner in which the rights of a holder of a mineral concession are so carefully preserved, and when one bears in mind the principle that a statute which deprives any person of any common law right has to be restrictively construed, it does seem that if the Legislature intended to make it necessary for the holder of a mineral concession to apply for and obtain a Crown grant before prospecting for or winning diamonds it would have said so in clear and unmistakable terms.

In the result, therefore, we are of opinion, although the matter is not free from doubt, that on a proper consideration of all the relevant sections of the Proclamation it is not necessary for the holder of a mineral concession to apply for and obtain a Crown grant before being able to prospect for and win diamonds in the territory covered in the concession in question. We understand, however, that the High Commissioner is prepared to confer a Crown grant upon extremely favourable terms. If this is so no harm can be done if Balkis Ltd. apply for a Crown grant, and it may be a wise precaution to do so.

P. MILLIN.
W. OSBRY.

Chambers,
Corporation Buildings,
29th October, 1934.

10141/252. No. 134.

DESPATCH

from

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received 16th April, 1936.)

(No. 241.)

SIR, High Commissioner's Office, Cape Town, 6th April, 1936.

With reference to Sir Herbert Stanley's despatch No. 1001 of the 27th November, 1934*, and connected correspondence on the subject of the concessions held by Messrs. Balkis, Limited, in the Bechuanaland Protectorate, I have the honour to inform you that I was advised by the Resident Commissioner on the 26th February that the Company had given notice that they would abandon the two concessions as from the 17th February and the 2nd March, 1936, respectively. Those dates were apparently conditioned by the dates in 1933 when the Mines and Minerals Proclamation, No. 33 of 1932, was applied to the Bangwaketsi Reserve and the Lobatsi Block, when the rent prescribed under sections 31 and 32 of the Proclamation became payable.

2. The notice given on behalf of the Company is as follows:—

> " I have been instructed by my Board to give you notice that Balkis, Limited, abandons the above concessions as from the 17th February and 2nd March, 1936."

The relevant portion of the concessions, dealing with their termination reads as follows:—

> "And the said Grantee promises to pay or cause to be paid punctually the aforesaid sums of money both rent and royalty to the said Chief, his heirs, successors, and assigns. This concession or demise to last so long only as the said sums of money both rent and royalty shall be punctually paid and in the event of the said Grantee failing to pay the same as aforesaid within three months of the due date thereof or of his giving to the said Chief, his heirs, successors, and assigns six months' notice in writing at any time of his intention to terminate the same, then this concession or demise shall come to an end and the said sum of one pound

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* No. 10141/221: not printed.

sterling per square mile per annum and the royalty aforesaid shall cease to be payable as aforesaid and the said Grantee shall on payment of all rent and royalties due to date be at liberty to remove all machinery and plant and the materials of all buildings erected by the said Grantee on the land of the said Chief."

3. From the terms of the notice of abandonment, it was not immediately clear by which of the above-mentioned alternative means the concessions were to be terminated, but the view of the Bechuanaland Protectorate authorities is that the Company intends to terminate the concessions by way of default in the payment of rental, and that the notice which has been given is an intimation of that intention; no rent will be paid after the two above-mentioned dates.

I have, &c.,
W. H. CLARK,
High Commissioner.

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(3) British South Africa Company—Preferential rights of the Company in respect of Minerals in the Bechuanaland Protectorate

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10141/184. No. 135.

BRITISH SOUTH AFRICA COMPANY
to
DOMINIONS OFFICE.

[Answered by No. 136.]

SIR, Rhodesia House, London, E.C.2, 19th February, 1934.

I am directed to request that you may be good enough to draw the attention of the Secretary of State for the Dominions to the correspondence noted in the attached schedule. Copies* of the correspondence are enclosed for convenience of reference.

It will be observed that a difference of opinion has arisen between the British South Africa Company and the High Commissioner for South Africa as to what is involved in a reasonable interpretation of the Company's preferential rights in regard to minerals in the Bechuanaland Protectorate.

My Directors feel sure that the Secretary of State will agree that some effective meaning must be given to their preferential rights, and are advised that in the case which has given rise to the difference of opinion above referred to, that of the Ghanzi, Kgalagadi, and Chobe Districts, the High Commissioner could not properly have thrown those Districts open to public prospecting without a prior accommodation of the Company's rights. Such an accommodation was made when the Company was given the opportunity to apply for a Crown grant in respect of these Districts and declined to do so; but the difference of opinion remains as to what would be the position if the High Commissioner were hereafter to close the Districts against public prospecting.

My Directors are advised that it would again become as it was before the Districts were thrown open; that is to say that the High Commissioner could not make a Crown grant in respect of them or any portion of them to any third party unless such Crown grant had previously been offered to the Company and been refused by it and could not again throw open the Districts or any portion of them to public prospecting without having first given the Company a fair opportunity of obtaining a Crown grant over them or such portion of them.

My Directors hope to hear that the Secretary of State is in agreement with the above view of the matter.

I am, &c.,
PERCY J. BAIRD,
Secretary.

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* *See* enclosures in Nos. 48, 54, 58, 65, 68 and 74 in Dominion (South African) No. 5.

SCHEDULE.

3rd September, 1932	...	Acting Imperial Secretary to Sir Drummond Chaplin.
18th October, 1932	...	Sir Drummond Chaplin to Imperial Secretary.
2nd December, 1932	...	Administrative Secretary, High Commissioner's Office, to Sir Drummond Chaplin.
14th July, 1933	...	Administrative Secretary to General Manager, British South Africa Company.
14th September, 1933	...	General Manager, British South Africa Company, to Administrative Secretary.
24th November, 1933	...	Administrative Secretary to General Manager, British South Africa Company.

10141/184. No. 136.

DOMINIONS OFFICE
to
BRITISH SOUTH AFRICA COMPANY.

SIR, Downing Street, 8th March, 1934.

I am directed by Mr. Secretary Thomas to acknowledge the receipt of your letter of the 19th February* on the subject of the preferential rights, of the British South Africa Company in respect of minerals in the Bechuanaland Protectorate, and to state that the letter from the Administrative Secretary to the High Commissioner for South Africa of the 14th July, of which a copy was enclosed in your letter, was written after the High Commissioner had consulted with the Secretary of State and had obtained his concurrence in the views expressed. Similarly, the letter of the 24th November was written after the High Commissioner had further referred to the Secretary of State.

2. Mr. Thomas is unable, therefore, to give an affirmative answer to your letter.

I am, &c.,
H. N. TAIT.

10141/218. No. 137.

DOMINIONS OFFICE
to
LAW OFFICERS OF THE CROWN.

[Answered by No. 138.]

GENTLEMEN, Downing Street, S.W.1, 5th March, 1935.

I am directed by Mr. Secretary Thomas to refer to the reports of the Law Officers of the 2nd June, 1898†, and of the 23rd June, 1920‡ (of which copies are enclosed), regarding the rights of the British South Africa Company in the Bechuanaland Protectorate.

2. It will be observed that the Company have been promised that they should have preferential rights in respect of the acquisition of concessions in the Protectorate, and that the position has been interpreted to be that no grant of land or mineral rights (with the exceptions specified in the enclosed copy of Colonial Office letter to the Law Officers of the 22nd May, 1920‡), should be made by the Government to third parties without giving the Company the prior right of taking up such grants.

3. Till recently it was not the policy of the Government to make grants of mineral rights in the Protectorate and the question of giving the Company the option of exercising their preferential rights only arose in a few isolated cases of leases of lands in regard to which the Company have always been consulted before the leases were sanctioned (with the exceptions specified in the Colonial Office letter above referred to).

4. This policy has now been changed and under Proclamation No. 33 of 1932§ (of which a copy is enclosed) provision is made for prospecting and mining within the

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* No. 135. † No. 193 in Dominions African (South) No. 559.
‡ No. 8 in Law Officers' Opinions, Vol. VIII. § Not reprinted.

Protectorate. The British South Africa Company were consulted with regard to this Proclamation and raised no objection to its terms, on the understanding that, though the point was not specifically provided for in the Proclamation, Crown lands would not be thrown open for prospecting under section 6 (3) of the Proclamation without their being first given the option of taking a Crown grant under section 35 in respect of the area in question.

5. Since the issue of the above Proclamation, correspondence, of which a copy is enclosed, has taken place with the High Commissioner for South Africa, from which it will be seen that a difference of opinion has arisen with the Company as to what is involved in a reasonable interpretation of their preferential rights in the Bechuanaland Protectorate. Particular attention is drawn to the Acting Imperial Secretary's letter to Sir Drummond Chaplin of the 3rd September, 1932 (enclosure 5 in High Commissioner's despatch No. 525 of the 6th September, 1932*), Sir Drummond Chaplin's letter to the Acting Imperial Secretary of the 18th October, 1932 (enclosure 1 in High Commissioner's despatch No. 638 of the 26th October†), and the Administrative Secretary's letter of the 14th July, 1933, to the General Manager of the British South Africa Company (enclosure 3 in High Commissioner's despatch No. 522 of the 14th July, 1933‡). The last of these letters was based on the minute of the 5th December, 1932, of Mr. Duncan the then Legal Adviser to the High Commissioner (enclosure 7 in High Commissioner's despatch No. 745 of the 30th December, 1932§). In connexion with this minute, a copy of Parliamentary Paper C. 7154‖, containing the text of Lord Ripon's despatch of the 20th December, 1892, is also enclosed. Subsequent correspondence with the General Manager of the Company in South Africa, with a legal opinion given by Mr. Blackwell, who succeeded Mr. Duncan as Legal Adviser to the High Commissioner, will be found in the High Commissioner's despatches of the 29th September¶, 24th October**, and 24th November, 1933††.

6. At the beginning of 1934, correspondence, of which a copy is enclosed, was exchanged between the British South Africa Company and this Office. Following this correspondence the position was discussed orally at the Dominions Office in August with a representative of the Company, who submitted the enclosed memorandum dated the 1st August, 1934, on the British South Africa Company's preferential rights in the Protectorate. It was arranged at this interview that the Company should furnish a statement of their own views on the point at issue, which could then be considered by the Secretary of State in consultation with the High Commissioner. In accordance with this arrangement a further memorandum, dated the 3rd August, 1934, of which a copy is enclosed, was furnished semi-officially on behalf of the Company.

7. These memoranda were forwarded to the High Commissioner for South Africa for his consideration, and I am to enclose a copy of a minute dated the 13th September, 1934, by his present Legal Adviser, Sir Cecil Fforde, on the matter.

8. The Secretary of State would be obliged if you would be so good as to take the enclosed papers into your consideration and to favour him with your opinion as to the Company's claims, viz.:—

(*a*) *Within the Native Reserves*—

(i) that, if a concession, whether held by the Company or by any third party, comes to an end, either because it was granted only for a limited period of time and that time has expired, or by reason of the operation of section 34 (1) of the Mines and Minerals Proclamation of 1932, or because the concessionaire had abandoned it, or for any other lawful reason, and the chief is subsequently willing and allowed by the Secretary of State to grant a new concession covering the same area or any part of the same area as the original concession did, the position is the same as it was when the original concession was granted and the Company has the first right to take up such new concession.

(ii) That the Company's preferential rights are not limited in point of time.

(*b*) *Within the Crown lands*—

(i) That the position with regard to any grant of land or mineral rights which the Crown may be willing to make is exactly the same as that stated above with regard to any mineral concession within a native reserve which the chief may be willing and allowed to grant.

* No. 48 in Dominions (South African) No. 5. † No. 54 in Dominions (South African) No. 5.
‡ No. 65 in Dominions (South African) No. 5. § No. 56 in Dominions (South African) No. 5.
‖ Not reprinted. ¶ No. 68 in Dominions (South African) No. 5.
** No. 70 in Dominions (South African) No. 5. †† No. 74 in Dominions (South African) No. 5.

(ii) That if the Company waived its rights in respect of a given area, and the area, having been thrown open for public prospecting, were subsequently closed by the Crown against such prospecting, the position would again be the same as it was originally, and that the Company's preferential rights would remain in existence, subject to any claims which might have been lawfully established by any third party while the area was open for public prospecting.

9. I am to add that it has been suggested by the Resident Commissioner for the Bechuanaland Protectorate that the matter might be dealt with by the adoption of one of two courses, viz., (*a*) the submission of a special case to the Judicial Committee of the Privy Council (i.e., under section 4 of the Act, Chapter XLI of 1833), or (*b*) the return of an answer to the Company explaining in unequivocal terms what the Government's views are, leaving it to the Company, in the event of its disagreement, to seek a remedy by applying for a mandamus. If you concur in the view of the case as stated by the Legal Advisers to the High Commissioner, the Secretary of State would be glad to learn which of these alternatives you think the more appropriate to adopt, if agreement cannot be reached by further negotiation.

I am, &c.,

H. N. TAIT.

List of Enclosures in No. 137.

From Law Officers dated 2nd June, 1898.[1]
From Colonial Office to Law Officers, 22nd May, 1920.[2]
Bechuanaland Protectorate Proclamation No. 33 of 1932.[3]
From High Commissioner No. 525 of 6th September, 1932.[4]
From High Commissioner No. 638 of 26th October, 1932.[5]
From High Commissioner No. 745 of 30th December, 1932.[6]
To High Commissioner No. 190 of 30th May, 1933.[7]
From High Commissioner No. 522 of 14th July, 1933.[8]
From High Commissioner No. 699 of 29th September, 1933.[9]
From High Commissioner No. 769 of 24th October, 1933.[10]
To High Commissioner, telegram No. 126 of 20th November, 1933.[11]
From High Commissioner No. 864 of 24th November, 1933.[12]
From Secretary of State to High Commissioner of 20th December, 1892.[13]
From British South Africa Company, 19th February, 1934.[14]
To British South Africa Company, 8th March, 1934.[15]

Enclosure 16 in No. 137.

MEMORANDUM.

The British South Africa Company's Preferential Rights in the Bechuanaland Protectorate.

The origin and history of the Company's preferential rights is contained in correspondence, which is of course in the possession of the Dominions Office, with various Secretaries of State going back for many years; but there is an element of uncertainty about what precisely these rights are to-day deemed to be, and this

[1] No. 193 in Dominions African (South) No. 559.
[2] No. 8 in Law Officers' Opinions, Vol. VIII.
[3] *See* No. 44 in Dominions (South African) No. 5: Proclamation not reprinted.
[4] No. 48 in Dominions (South African) No. 5.
[5] No. 54 „ „ „ „ „ „
[6] No. 56 „ „ „ „ „ „
[7] No. 62 „ „ „ „ „ „
[8] No. 65 „ „ „ „ „ „
[9] No. 68 „ „ „ „ „ „
[10] No. 70 „ „ „ „ „ „
[11] No. 71 „ „ „ „ „ „
[12] No. 74 „ „ „ „ „ „
[13] *See* Parliamentary Paper C. 7154: not reprinted.
[14] No. 135.
[15] No. 136.

uncertainty is somewhat embarrassing. It would be very much so if there were any idea of making any change in the present system of administration of the Protectorate, and it is desirable to avoid another of those " reticences and reserves " which as their Lordships of the Judicial Committee of the Privy Council observed in their Report on the Reference regarding the Southern Rhodesian lands, " sooner or later come home to roost."

So far the British South Africa Company has no compliant regarding anything that has actually been done in the Protectorate, for in cases in which grants of land or mineral rights have been made to other parties, the Company has previously waived its rights; but already there is a difference of opinion as to the interpretation of those rights in connexion with the Ghanzi, Kgalagadi and Chobe districts, as to which there has been correspondence terminating at present with the Dominions Office letter of the 8th March, 1934.

The Company would submit that the questions involved in the interpretation of its preferential rights have not been disposed of by the letters from the Administrative Secretary to the High Commissioner of the 14th July and 24th November, 1933, and by the intimation that those letters were written after consultation with the Secretary of State. The nature of the rights could not be expressed with legal nicety in the early days when they were granted, and in view of subsequent development of mining law and practice in the Protectorate, it is submitted that the precise interpretation of them calls for comprehensive review and that it is desirable now to reach accord as to their meaning and effect in order to preclude doubt and dispute in the future.

As regards the three particular districts above named, the position is that at present the Company has acquiesced in their being thrown open to public prospecting under the Proclamation of 1932; but the question remains what the Company's rights will be if and when those areas are again closed to public prospecting and the Crown resumes capacity to grant exclusive rights in them.

The Administrative Secretary appears to have regarded the Company as requesting that the Crown should concede, or make a new agreement, that the Company's rights should revive in those districts if and when any Crown grant which might be made to another party expires, or in the event of the areas or parts of them being withdrawn from public prospecting.

The view of the Company is that its rights have not been extinguished by reason of the areas having been thrown open to public prospecting under a law which was promulgated many years after the rights had been acquired, and which, therefore, in law and equity must be administered subject to those pre-existing rights. What exactly those rights may be and how they are to be implemented is one of the questions which the Company desires to review with the Crown.

The proposal made in paragraph 3 of the letter of 14th July can hardly be supposed to have been intended as a gratuitous offer by His Excellency. The Company reads it as the suggestion of a way in which effect might be given to the Company's rights. It cannot regard it as a settlement which His Excellency was in a position to dictate, and the Secretary of State to confirm by expressing approval of the letters as conveying a final decision. The Crown would not, it is thought, seek to determine by its own *ipse dixit* a difference to which the Crown itself is a party. The difference is one for amicable adjustment if possible, on a full consideration of the circumstances, such as does not appear from the correspondence yet to have been given to the case.

The Company does not consider that by acquiescing, as in the circumstances it has acquiesced, in the three areas being thrown open to prospecting after the Company had been afforded an opportunity to apply for a Crown grant, it has agreed that even in this case due effect has been given to its rights by the procedure adopted.

The questions involved turn on considerations of the meaning of the preferential rights granted and the circumstances in which those rights now have to be exercised, which it is thought were not fully in the mind of His Excellency, and which the Company wishes to submit to the Secretary of State.

The Company's preferential rights extend throughout the whole of the Protectorate, and the letters of the Administrative Secretary have raised a doubt in the minds of the Company as to the view which the Crown may entertain with regard to those rights not only in Crown lands which may be thrown open to prospecting and closed again, but in other areas where grants of exclusive rights may be made.

The Company foresees occasions on which difficulties are likely to arise, and it is apprehensive lest serious injustice and hardship might be caused if the Crown claimed to determine such questions without hearing the Company's side of the case.

I hope to explain the position further at the interview which Sir Edward Harding has been good enough to accord to me to-morrow.

1st August, 1934.

D. O. M.

Enclosure 17 in No. 137.

THE BRITISH SOUTH AFRICA COMPANY'S PREFERENTIAL RIGHTS IN REGARD TO LAND AND MINERALS IN THE BECHUANALAND PROTECTORATE.

The Company are advised, in the light of the correspondence which has taken place with various Secretaries of State in the past, that their rights are as follows:—

A. *Within Native Reserves.*—Here the native chiefs, it is understood, would never be allowed by the Secretary of State to grant land concessions even if they desired to do so; but they may, with the approval of the Secretary of State, grant concessions of mineral rights.

The Company has the first right to take up any mineral concession which any native chief may be willing and allowed by the Secretary of State to grant.

If the Company declines to take up a concession, that concession (not a similar one on better terms) may be offered to and taken up by any third party.

If a concession, whether held by the Company or by any third party, as above, comes to an end, either because it was granted only for a limited period of time and that time has expired, or by reason of the operation of section 34 (1) of the Mines and Minerals Proclamation of 1932 (which limits the duration of concessions to 25 years) or because the concessionaire had abandoned it, or for any other lawful reason, and the chief is subsequently willing and allowed by the Secretary of State to grant a new concession covering the same area or any part of the same area as the original concession did, the position is the same as it was when the original concession was granted and the Company has the first right to take up such new concession.

The Company's preferential rights are not limited in point of time.

B. *Within the Crown lands.*—The position with regard to any grant of land or mineral rights which the Crown may be willing to make is exactly the same as that stated above with regard to any mineral concession within a Native Reserve which the chief may be willing and allowed to grant.

There remains the possibility of the Crown contemplating the throwing open to public prospecting for minerals under Part II of the Proclamation of 1932 any portion of the Crown lands. The powers of the Crown in this behalf having been taken by legislation long after its recognition of the Company's preferential rights, it follows that the Crown would not wish so to exercise its powers as to subvert those rights. Those rights, the Company is advised, would be satisfied if before any area were thrown open to public prospecting, the Company were offered on reasonable terms an exclusive grant over such area or over such lands within the area as it might wish to select. It is impossible to express in advance in a precise formula exactly what would be " reasonable terms " in any hypothetical case of the character contemplated which might arise in the future, but the letter to the Company from the Colonial Office of the 6th September, 1913, indicates that it would be reasonable that the Company should take out a number of prospecting licences equal to that which it might be fairly anticipated would be taken out by members of the public if the area selected by the Company were thrown open to public prospecting. Alternatively the Company might undertake to spend on the *bona fide* prospecting of the area selected by it such sums as might fairly be estimated to be sufficient to secure a satisfactory examination of its mineral possibilities. In any event the Company should have within its area the exclusive right to establish claims to be held in terms of the Proclamation.

If the Company waived its rights and the area, having been thrown open for public prospecting, were subsequently closed by the Crown against such prospecting, the position would again be the same as it was originally. The Company's preferential rights as above described would remain in existence, subject to any claims which might have been lawfully established by any third party while the area was open for public prospecting.

3rd August, 1934.

Enclosure 18 in No. 137.

BECHUANALAND PROTECTORATE: RIGHTS OF BRITISH SOUTH AFRICA COMPANY.

In its memorandum dated 3rd August, 1934, which I presume has been drawn up after legal opinion has been taken, the Company formulates its legal position in regard to its preferential rights in the Bechuanaland Protectorate. The Company claims:—

A. That it has the first right to take up any mineral concessions which any native chief may be willing and allowed by the Secretary of State to grant, and that, if the Company declines to take up a concession, that concession, and not a similar one on better terms, may be offered to and taken up by any third party.

To this contention there can be no objection, but the Company further claims that, if a concession whether held by itself or by any third party comes to an end either because it was granted only for a limited period which has expired, or by reason of the operation of section 34 (1) of the Mines and Minerals Proclamation of 1932, or because the concessionaire had abandoned it, or for any other lawful reason, and the chief is subsequently willing and allowed by the Secretary of State to grant a new concession covering the same area or any part of the same area as the original concession did, the position is the same as it was when the original concession was granted, and the Company has the first right to take up such new concession. This contention in my opinion is not sound. Nor is the Company's further claim that its preferential rights are not limited in point of time.

The Company claims:—

B. That its position within the Crown lands is precisely the same as that with regard to any mineral concession within Native Reserves which the chief may be willing and allowed to grant.

The memorandum then discusses the possibility of the Crown contemplating the throwing open to public prospecting for minerals, under Part II of the Proclamation of 1932, any portion of the Crown lands. The views of the Company in regard to this branch of its claims appear to be reasonable and unobjectionable. In the concluding paragraph, however, the Company claims that, if it waived its rights, and the area having been thrown open for public prospecting was subsequently closed by the Crown against such prospecting, the position would again be the same as it was originally, and that the Company's preferential rights would remain in existence subject to any claims which might have been lawfully established by any third party while the area was open for public prospecting. This contention, which is the same as has been raised in the latter part of A, is, in my opinion, wholly unsustainable. The true position of the Company has been discussed by Mr. Duncan in his second opinion, and by Mr. Leslie Blackwell, and I find myself in agreement with their views.

As Lord Milner has observed, " the Company has, to use a commercial phrase, an option to acquire or occupy." It has a preferential right to obtain mineral and other concessions, but, once it has been given the option, in preference to any other claimants, to exercise those rights in any particular case and has neglected or refused to do so or has taken up a concession and subsequently abandoned it, the option, so far as that matter is concerned, must be deemed to have terminated. The Company has, as Mr. Blackwell expressed it, a first refusal, and having made its selection to take or refuse or having taken and relinquished, its rights are concluded.

The Company's further contention that its preferential rights are not limited in point of time appears to be entirely against the spirit and intention of the agreement expressed in the relative documents. It is clear from the text of Lord Ripon's despatch of the 10th December, 1892, that the Company's right to obtain concessions was granted subject to its (1) seeking them within a reasonable time, (2) exercising due diligence in applying for them, (3) offering reasonable inducements to the chiefs and people to grant them. I cannot, throughout the despatches and correspondence, find any expressions which could have led the British South Africa Company to entertain the impression that the exercise of its preferential rights had no time limit.

CECIL FFORDE.

13th September, 1934.

10141/241.

No. 138.

LAW OFFICERS OF THE CROWN

to

DOMINIONS OFFICE.

SIR, Royal Courts of Justice, 24th June, 1935.

We were honoured with your commands signified to us in Mr. H. N. Tait's letter of the 5th March, 1935*, submitting for our opinion a question which has arisen with regard to the interpretation of the preferential rights of the British South Africa Company in the Bechuanaland Protectorate.

* No. 137.

We have taken the matter into our consideration and, in obedience to your commands, have the honour to report that—

We accept the view taken by our predecessors as expressed in their report of 2nd June, 1898*, as to the rights of the British South Africa Company in the Bechuanaland Protectorate. The description however of the Company's rights as " preferential rights " must not be allowed to obscure the nature of the obligation undertaken by the Government by way of encouraging railway extension into the Protectorate. Lord Ripon's despatch of 20th December, 1892†, states the obligation, but it is subject to certain conditions of which the first is all-important. The far-reaching claims now made by the Company might well be supported if it were not for the proviso that the Company should seek concessions within a reasonable time, using due diligence, and offering reasonable inducements. In view of this proviso, we are of opinion that the Government's obligation is not a continuing one unlimited in point of time and springing to life whenever for any reason the position with regard to any area becomes the same as it was when the Company was first entitled to the benefit of its preferential rights.

We are therefore of opinion that the Company's claims are unfounded with regard both to the native reserves and to the Crown lands.

It is impossible to define in general terms the precise limits in point of time of the Company's rights. Each proposed grant must be dealt with by the Government according to the facts of the case in relation to the first proviso.

Proceedings by way of an application for a Writ of Mandamus would not afford an appropriate remedy in case of a difference of view between the Company and the Government. A reference under section 4 of the Judicial Committee Act, 1833, would, in our opinion, be a convenient method of determining the rights of the Company, subject to the concurrence of the Company in this course. There might be some difficulty in settling the questions to be referred, in advance of any actual case in which the Company could claim to have been deprived of its rights, and care would have to be taken, that the issues were clearly defined.

We have, &c.,

T. W. INSKIP.

D. B. SOMERVELL.

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(4) British South Africa Company—Concessionary right of the Company in the Bakwena Reserve

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10141/202.

No. 139.

DESPATCH

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 30th July, 1934.)

(Bechuanaland Protectorate.)

(No. 557.)

High Commissioner's Office, Cape Town,

SIR, 11th July, 1934.

With reference to Admiral Evans's despatch No. 730 of the 10th October, 1933‡, I have the honour to enclose, for your information, a copy of the under-mentioned documents on the subject of the British South Africa Company's concessionary rights in the Bakwena Reserve, Bechuanaland Protectorate.

I have, &c.,

H. J. STANLEY,

High Commissioner.

* No. 193 in Dominions (African (South)) No. 599. † *See* Parliamentary Paper C.7154.
‡ No. 69 in Dominions (South African) No. 5.

Enclosure 1 in No. 139.

The British South Africa Company, Resident Director's Office,
Charter House, Salisbury, 27th June, 1934.

SIR,

I have the honour to advise you that instructions have been given to the Rhodesia Chartered Agency Limited, Cape Town, to make the usual payments, due on the 30th June annually, under the Agreement with Sebele, Chief of the Bakwena of the 6th August, 1903, viz.,

	£
1.	180 in respect of the Secheleland Concession.
2.	225 in respect of the Reisle and Nicholls and other concessions disallowed.
Total	£405

In making these payments, I am instructed by the Board of the British South Africa Company in London to inform you that the Board has now under consideration the question whether the Bakwena Concession should be retained after the period covered by the present payment has elapsed, viz., after 31st December, 1934.

The area covered by the Bakwena Concession has been prospected by the Victoria Prospecting Company Limited, without any economic discovery being made, and Messrs. De Beers Consolidated Mines Limited, are at present engaged in a further examination of the area, which may last for a few months.

In the event of Messrs. De Beers deciding that the area contains nothing of interest to them, the Board of the British South Africa Company would propose to relinquish this Concession.

I will advise you definitely on this point before the 20th October next, when, if the Company still desires to keep the Concession alive, the rental of 1s. per square mile, payable to the Crown, would fall due.

I have not communicated with the Chief of the Bakwena in this matter, as I presume that you will inform him, at the appropriate time, of the Company's intentions as stated above.

I have, &c.,
T. E. ROBINS,
Resident Director.

The Administrative Secretary
to the High Commissioner,
Pretoria.

Enclosure 2 in No. 139.

High Commissioner's Office, Pretoria, 11th July, 1934.

SIR,

I have the honour to acknowledge the receipt of your letter of the 27th June regarding the payments made by the British South Africa Company in terms of the Agreement of the 6th August, 1903, with Sebele, Chief of the Bakwena tribe in the Bechuanaland Protectorate.

2. I note that the prospecting operations carried out in the area covered by the Bakwena Concession have not resulted in any economic discovery having been made, and that in the event of the further examination of the area at present in progress proving similarly unsuccessful, the Board of the British South Africa Company would propose to relinquish this Concession.

3. I also note that you will advise definitely on this point before the 20th October next.

I have, &c.,
SHIRLEY EALES,
Administrative Secretary to the
High Commissioner.

The Resident Director,
British South Africa Company,
Salisbury.

Enclosure 3 in No. 139.

(Bechuanaland Protectorate.)

(No. 1852.)

High Commissioner's Office, Pretoria, 11th July, 1934.

SIR,

I have the honour to transmit herewith a copy of a letter from the Resident Director of the British South Africa Company regarding the payments made by the Company in terms of the Agreement of the 6th August, 1903, with Sebele, Chief of the Bakwena tribe. I also enclose a copy of the acknowledgment which has been sent.

2. You will observe that the Board of the Company has now under consideration the question whether the Bakwena Concession should be retained in view of the lack of success which has attended the prospecting operations undertaken in the area under concession.

I have, &c.,
H. J. STANLEY,
High Commissioner.

His Honour
The Resident Commissioner
of the Bechuanaland Protectorate.

10141/209.

No. 140.

DESPATCH

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 22nd October, 1934.)

(Bechuanaland Protectorate.)

(No. 780.) (Extract.)

High Commissioner's Office, Pretoria,
29th September, 1934.

SIR,

With reference to my despatch No. 557 of the 11th July*, I have the honour to transmit herewith a copy of a letter from the Resident Director of the British South Africa Company giving notice that it is the intention of the Company to abandon the Secheleland Mineral Concession with effect from the 21st September, 1934.

* * * * * *

I have, &c.,
H. J. STANLEY,
High Commissioner.

Enclosure in No. 140.

The British South Africa Company, Resident Director's Office,
Salisbury, 21st September, 1934.

SIR,

Bakwena Concession.

With reference to my letter of the 27th June last, I hereby give you notice that it is the intention of the British South Africa Company to abandon what is known as the Secheleland Mineral Concession as from this date.

The Concession was held under the Agreement, dated 6th August, 1903, between this Company and the then Chief of the Bakwena Tribe, and I am, by this mail, advising the Chief, Sebele II, of the abandonment.

I have, &c.,
W. I. CLARK,
for Resident Director.

The Administrative Secretary to
His Excellency the High Commissioner,
High Commissioner's Office, Pretoria.

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* No. 139.

(5) De Beers—Crown Grant

10141/245. No. 141.

DESPATCH

from

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received 1st August, 1935.)

[*Answered by No. 142.*]

(Bechuanaland Protectorate.)

(No. 450.)

SIR, Pretoria, 23rd July, 1935.

With reference to my despatch No. 67 of the 31st January* and previous correspondence regarding the application by De Beers Consolidated Mines, Limited, for a Crown Grant to prospect for and mine diamonds in certain areas of the Bechuanaland Protectorate, I have the honour, in accordance with the request contained in paragraph 3 of your despatch No. 79 of the 22nd February, 1932†, to transmit herewith a copy of a despatch from the Acting Resident Commissioner‡ forwarding a copy of correspondence with the Company, with a draft of the proposed Crown Grant. A copy of a minute by my Legal Adviser is also attached‡.

2. You will have seen from their letter of the 18th December, 1934, and the reply from this Office of the 31st January, 1935, (of which copies accompanied my despatch) that the De Beers Company proposed to select a restricted area in one or more of the Chobe, Kgalagadi and Ghanzi Districts, and the areas now selected are shown on the enclosed plan.

3. In reply to the letter which was sent to them on the 31st January, the British South Africa Company observed that if the contemplated Crown Grant was to be in respect of diamonds they could not acquiesce in the issue of such a grant for the remaining extent of the three districts referred to unless the De Beers Company had first been offered a Crown Grant over the area mentioned and had declined the offer. They also intimated their view that if the Grant covered other minerals besides diamonds the position would be that the Ghanzi, Kgalagadi and Chobe Districts, which had been thrown open to public prospecting would now be closed to such prospecting and a new Crown Grant made in respect of them. The Company therefore claimed that such a Grant should first be offered to them under their interpretation of their preferential rights.

4. In the reply sent from this office it was pointed out to the British South Africa Company that the De Beers Company had in fact been offered a Crown Grant in respect of diamonds covering the whole of the three districts but after a preliminary geological survey they had asked for a Grant covering a limited area only. The attention of the Chartered Company was also drawn to High Commissioner's Notice No. 191 of 1933 under which the three districts were thrown open to public prospecting for minerals other than diamonds and they were informed that as any Crown Grant that might be issued for the areas not selected by the De Beers Company would be in respect of diamonds only the question of closing these Districts to public prospecting for other minerals did not arise. It was added that the action contemplated would not appear to affect the claims of the British South Africa Company in regard to their preferential rights.

5. A further letter has now been received from the British South Africa Company† of which a copy is enclosed herewith stating that the Company raises no objection to the issue of Crown Grants over any area in the three districts which the De Beers Company have definitely refused to take up, but contending that the De Beers Company have not refused to take up certain portions of the districts but wish to consider taking up sections thereof under successive Crown Grants as circumstances may determine, their present application not being regarded by the Chartered Company as implying a refusal of the remainder of the area. This view is referred to in the concluding portion of the De Beers Company's letter of the 21st June§.

* No. 10141/230: not printed. † No. 27 in Dominions (South African) No. 5. ‡ Not printed.
§ No. 10141/245: not printed.

6. As you are aware the question of the issue of the Crown Grant has been delayed for a considerable time while the desired areas have been selected and I shall be glad to learn whether I may now be authorized to issue the Grant in the attached form, subject to the observations by my Legal Adviser which are contained in his attached Minute.

I have, &c.,
W. H. CLARK,
High Commissioner.

10141/248. No. 142.

DESPATCH

to

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

[*Answered by No. 148.*]

(Bechuanaland Protectorate.)

(No. 519.)

SIR, Downing Street, S.W.1, 8th November, 1935.

With reference to your despatch No. 450 of 23rd July*, I have the honour to inform you that I concur in the terms of the draft Crown Grant to De Beers Consolidated Mines, Limited, subject to the following observations:—

Opening operative clause, at the bottom of page 1. It is not clear whether the words " sole and " add anything to the word " exclusive ". If so it would appear that they should be omitted, since Section 35(1) of the Mines Proclamation used only the latter word.

Definition of areas. The area defined in paragraph (*b*) on page 2 seems to be that marked C, not B, on the plan, and the area described in paragraph (*c*) seems to be that marked B.

Clause 1. Having regard to the terms of section 35(1) of the Mines Proclamation and to Sir Cecil Fforde's observations on this clause, it would appear that the words " duly conferred " should be omitted.

Clause 4(2). I assume that you are satisfied that this complies with proviso (*b*) to section 35(3) of the Mines Proclamation.

Clause 6. It is not clear how, if the Administration and the Company do not agree, the terms of a renewed grant are to be settled. Even if an arbitration clause is inserted, as suggested, the question at issue seems hardly one for an arbitrator. If the intention of the clause is that the terms of the renewed Grant shall be the same as those contained in this grant, subject to such modifications and additions only as shall be agreed, it would appear that the clause requires redrafting to make this clear.

Clause 7. Since the last five lines appear capable of exempting the Company in certain circumstances from liability for compensation to which the holder of a Certificate of Occupation might be entitled under the last sentence of Clause VI of the Certificate, I presume that the intention is that such liability should be met by the Government. It is not however entirely clear whether that sentence applies only if the Government resume occupation. If so, apparently the Company could do damage to the occupier's improvements, and, unless the Government resume occupation, the sufferer would have no redress.

I have, &c.,
J. H. THOMAS.

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* No. 141

10141/251. No. 143.

TELEGRAM

from

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received at 11.53 a.m., 4th April, 1936.)

[*Answered by No. 144.*]

No. 47. 4th April. Your despatch No. 519 of the 8th November, 1935*. Have now been approached by De Beers with proposal that instead of Crown grant for limited area they should be given grant for the whole Chobe Ghanzi and Kgalagadi Mining Districts. Approximate area involved is 93,300 square miles and suggested terms of grant are as follows:—(1) Rental £1,000 per annum; (2) Expenditure on prospecting £1,500 per annum; (3) Period two years renewable for one or two years on the same terms; (4) Number of prospecting parties one. Rental proposed is approximately three pence a square mile in lieu of one shilling per square mile proposed for area included in the original draft Crown Grant†, but districts in question contain considerable proportion of ground said to be useless for prospecting purposes and it is unlikely therefore that De Beers would be prepared to pay rental at the rate of one shilling for the whole area. Apparently, question of rental seems to be comparatively minor issue in comparison with our object which is to ascertain whether diamonds exist in the Crown Lands. After consultation with the Resident Commissioner I am in favour of accepting the company's proposals and I should be glad if you would approve of negotiations being entered into for the issue of Crown Grant on basis of terms set forth above.

10141/251. No. 144.

TELEGRAM

to

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Sent 10.45 p.m., 15th April, 1936.)

[*Answered by No. 145.*]

No. 40. Your telegram No. 47, 4th April‡. I agree as to importance of ascertaining whether diamonds exist in the Crown lands and approve of your proceeding with negotiations for issue of Crown Grant to De Beers on terms proposed, on the assumption that you do not think it necessary or practicable to require higher rate of expenditure on prospecting and higher rent. As regards former it will be remembered that sum of £5,000 per annum was suggested in letter to Company enclosed in High Commissioner's despatch No. 377 of 30th June, 1932§, and that Company themselves had previously offered to spend at least £3,000‖. As regards latter proposed rental appears very low especially in view of fact that one shilling per annum per square mile was recommended by Imperial Institute in letter enclosed in my despatch No. 79, 22nd February, 1932¶, and provided for in original draft Crown Grant. I note however what you say about nature of ground, and in light of this suggest you should propose sixpence per square mile. Failing agreement on this I approve of £1,000.

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* No. 142. † *See* No. 141. ‡ No. 143.
§ No. 40 in Dominions (South African) No. 5.
‖ *See* No. 99 in Dominions (South African) No. 4. ¶ No. 27 in Dominions (South African) No. 5.

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10141/256. No. 145.

DESPATCH

from

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received 9th December, 1936.)

[*Answered by No. 146.*]

(Bechuanaland Protectorate.)

(No. 763.)

SIR, Pretoria, 27th November, 1936.

With reference to your telegram No. 40 of the 15th April*, I have the honour to transmit herewith a copy of correspondence with the Resident Commissioner of the Bechuanaland Protectorate† on the subject of the Crown Grant to the De Beers Company of rights to prospect for and win diamonds in certain parts of the Protectorate.

2. The measurements of the land have been inserted in the draft Grant, and it has been ascertained that a portion of one of the areas covers 585 square miles of Crown Land in the Lobatsi District. The Mining Law has already been applied to the Ghanzi, Kgalagadi and Chobe Districts (see High Commissioner's Notices Nos. 184 of 1932, and 190 and 192 of 1933) and to the Lobatsi Block (Notices Nos. 29, 30 and 31 of 1933), but it is necessary to apply the Proclamation similarly to the above area of 585 square miles as defined in the draft Notice attached to the Resident Commissioner's despatch of the 20th November.

3. It will be seen that a proviso has been inserted in clause 4 (1) of the draft Grant which will have the effect of depriving the Government of the right to alter the rates of diamond taxation so far as the areas under grant are concerned during the currency of the Grant, which with the extension provided for, may be as much as four years.

4. It does not seem likely that the rates of taxation on diamonds laid down in the Mining Law will require alteration during this period, as they appear to be adequate. I am therefore inclined to think that this condition might be accepted unless you see any serious reasons to the contrary.

5. As you are aware the negotiations in respect of this Grant have been in progress for a considerable time, and I am anxious that operations should commence if possible on the 1st January next. I shall therefore be obliged if your decision may be communicated by telegraph.

I have, &c.,

W. H. CLARK,

High Commissioner.

10141/256. No. 146.

DESPATCH

to

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Bechuanaland Protectorate.)

(No. 600.)

SIR, Downing Street, S.W.1, 17th December, 1936.

I have the honour to acknowledge the receipt of your despatch No. 763 of the 27th November‡ forwarding for approval the draft of a Crown Grant to the De Beers Company of rights to prospect for and win diamonds in certain parts of the Bechuanaland Protectorate.

2. I observe that the boundaries of the areas of land which are the subject of the Grant are not defined. I am advised that it is necessary for the boundaries of the areas

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* No. 144. † Not printed. ‡ No. 145.

of land concerned to be specified in all cases and, if possible, plans of the areas concerned to be annexed to the Grant. In the case of the area of 585 square miles in the Lobatsi District, the boundaries which are specified appear to be incomplete as they do not include a definition of the western limit.

3. *Clause 3.*—It is suggested that " or " in the first line should read " and ".

4. *Clause 4 (1).*—While I am prepared to accept the recommendation in paragraph 3 of your despatch that the De Beers Company may be given an assurance that during the period of currency of the Grant or any extension thereof no change will be made in the rate of diamond taxation so far as concerns the land covered by the Grant, I am advised that it is very doubtful whether the proviso to Clause 4 (1), which as drafted purports to limit your legislative power in connexion with the imposition of diamond taxation, is valid. (See in this connexion Ayr Harbour Trustees v. Oswald 8 A.C. 623, York Corporation v. Leatham 1924 1 Ch. 559, Southport Corporation v. Birkdale District Electric Supply Company 1926 A.C. 355.) It is suggested that the object in view might be attained by the modification of the proviso to Clause 4 (1) to read as follows:—

> " Provided that if any diamond taxation other than that presently payable under the laws of the Territory shall be levied during the currency of this Grant or any extension thereof, all amounts payable by the Grantee in respect thereof during that period in relation to the said four areas may be deducted from the rental payable under Clause 2 of this Grant, and that if the said amounts exceed that rental the High Commissioner shall reimburse the Grantee to the extent of such excess ".

5. I may point out that the proviso to Clause 4 (1), as it appears in the draft enclosed in the Resident Commissioner's despatch of the 16th October, does not appear to give effect to the proposed limitation to the period of validity of the Grant of the undertaking not to raise the rate of diamond taxation. Indeed, the proviso purports to make the undertaking applicable to taxation on discoveries during the currency of the Grant without time limit, and on land pegged during the currency of the Grant *and worked thereafter.*

6. *Clause 7.*—I am advised that under English law it is doubtful whether the occupier who is given the right to compensation under this Clause could sue for it as he is not a party to the agreement, and that as the clause confers no rights on the High Commissioner, it is very doubtful whether the High Commissioner could do so either. It is suggested that if the same difficulty arises under Roman-Dutch law, it should be overcome by providing for payment of the compensation to the High Commissioner, if demanded by him, on behalf of the occupier.

7. I am further advised that under English law it is equally doubtful whether, in the absence of a like provision in the certificate of occupation, the provision in Clause 7 for arbitration would be binding on the occupier, who is not a party to the agreement.

8. Subject to consideration of the above points, I approve the terms of the draft agreement enclosed in the Resident Commissioner's despatch of the 16th October.

9. I telegraphed to you on 16th December* that this despatch was being sent.

I have, &c.,

MALCOLM MACDONALD.

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(6) Tati Company—Annual Payment by the Bechuanaland Administration to the Company

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10141/210.

No. 147.

TATI COMPANY LIMITED

to

DOMINIONS OFFICE.

[*Answered by No. 148.*]

SIR, 73, Cheapside, E.C.2, 29th October, 1934.

I am instructed by my Directors to refer to the Proclamation of the High Commissioner for South Africa No. 2 of 1911, being the Proclamation of the title to the Tati District, Bechuanaland Protectorate, granted to the Tati Concessions Ltd.—of which

* No. 10141/256: not printed.

Company the Tati Company Ltd. is the immediate successor—and particularly to Clause 1 (2) of the Proclamation which reads:—

> " The right of the Tati Concessions Limited to claim rent from natives within the native reserve shall cease and in lieu thereof the Government of the Bechuanaland Protectorate will pay the Tati Concessions Limited the annual sum of £1,000 (one thousand pounds) payment to be made on every first day of June ".

In view of the low rates of interest now obtaining it has occurred to my Directors that it may suit the Government to redeem by a single cash payment this obligation to pay £1,000 annually to the Tati Company, Ltd. I am accordingly asked to say that my Board will be pleased to consider any proposal you may submit to them in the matter.

I am, &c.,

T. P. PATTERSON,

Secretary.

10141/217.

No. 148.

DOMINIONS OFFICE

to

TATI COMPANY LIMITED.

SIR, Downing Street, S.W.1, 14th December, 1934.

I am directed by Mr. Secretary Thomas to refer to your letter of the 29th October* suggesting that the liability of the Bechuanaland Protectorate Administration to pay £1,000 per annum to the Tati Company should be redeemed by a single cash payment.

2. I am to request you to inform your Directors that this proposal has been carefully considered but that the Secretary of State feels that the time is not opportune to adopt it.

I am, &c.,

H. N. TAIT.

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(7) Tati Company—Application of the Protectorate Mining Laws (1932) to the Tati District

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10141/223.

No. 149.

TATI COMPANY, LIMITED

to

DOMINIONS OFFICE.

[*Answered by No. 150.*]

SIR. 73, Cheapside, E.C.2, 18th December, 1934.

I am instructed by my Board to send you the enclosed copy of letter dated 24th November, 1934, from the Government Secretary of the Bechuanaland Protectorate, Mafeking, addressed to our General Manager at Francistown.

My Board has not yet had time to study the full implications of the proposed new Mining Proclamation but the provisions thereof would appear to be no less objectionable from the Company's point of view than those contained in the draft Mining Proclamation of 1932 against which my Board were compelled to offer strenuous resistance at the time. You may recollect that I laid before you in February, 1932†, a memorandum in which my Board's objections to the proposals were set out in some detail. The main point of my Company's objection was that the proposals then submitted were in direct conflict with Section 8 of Proclamation No. 2 of 1911, which states:—

> " Nothing shall interfere with the rights of the Company as owners to grant or refuse to grant permission to prospect or mine upon their lands or to impose such conditions upon the grant of any such rights as they may deem fit ".

The same point is taken by my Board with regard to the present draft Proclamation.

* No. 147. † No. 24 in Dominions (South African) No. 5.

It is observed that the Government Secretary at Mafeking has suggested that the draft proposals should be discussed at a conference between representatives of the Company and the Administration. My Board is at all times ready to discuss matters with the Government and will be very glad to have the opportunity of submitting their views in person. As the Company's Head Office is in London and its Directors are resident in England my Board is of opinion that the proposed conference should take place in London.

I am, &c.,
T. P. PATTERSON,
Secretary.

Enclosure in No. 149.

(Bechuanaland Protectorate.)

Government Secretary's Office, Mafeking,
24th November, 1934.

SIR,

I beg to enclose a draft Proclamation applying the Bechuanaland Protectorate Mines and Minerals Proclamation, 1932, to the Tati District, in regard to the preparation of which consideration has been given to your Company's objections as formulated in its memorandum on this subject addressed to the Dominions Office, London.

If it is desired to make any representations in regard to any of the provisions of the draft, I am directed to enquire whether it would be agreeable to your Company that these should be discussed at a conference between representatives of the Company and the Administration and in this eventuality I should be glad if you would inform me who would represent the Company at such conference. It would also be convenient if you would suggest a date upon which the conference might be held.

I am, &c.,
(Sgd.) .....
Government Secretary.

The General Manager,
Tati Company, Limited,
Francistown.

10141/223.

No. 150.

DOMINIONS OFFICE
to
TATI COMPANY, LIMITED.

[*Answered by No. 151.*]

Downing Street, S.W.1, 5th January, 1935.

SIR,

I am directed by Mr. Secretary Thomas to acknowledge the receipt of your letter of the 18th December* in regard to the draft Proclamation applying the Bechuanaland Protectorate Mines and Minerals Proclamation, 1932, to the Tati District.

2. I am to request you to inform your Board that the draft Proclamation has been prepared after very careful consideration of their previous representations and with full regard to the terms of Bechuanaland Protectorate Proclamation No. 2 of 1911, and that it is thought therefore that it would be convenient, before entering into oral discussions, if a further written statement could be supplied for consideration setting out in detail your Board's views with regard to the terms of the new draft Proclamation.

I am, &c.,
R. R. SEDGWICK.

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* No. 149.

10141/232.

No. 151.

TATI COMPANY, LIMITED,
to
DOMINIONS OFFICE.

[*Answered by No. 152.*]

73, Cheapside, E.C.2, 1st March, 1935.

SIR,

I have the honour to refer to your letter of 5th January last*, and to my acknowledgment thereof dated 23rd January†.

As instructed by my Directors I send you herewith a further written statement setting out my Board's views with regard to the terms of the draft Proclamation of 1934 applying the Bechuanaland Protectorate Mines and Minerals Proclamation, 1932, to the Tati District.

I am also instructed again to draw your attention to the letter dated 25th November, 1931, from the Company's Solicitors in Bulawayo, Messrs. Coghlan & Welsh, to the Resident Commissioner for the Bechuanaland Protectorate enclosed in my letter to you of 10th February, 1932‡.

I am, &c.,
T. P. PATTERSON,
Secretary.

Enclosure in No. 151.

EXTRACT FROM MEMORANDUM OF THE TATI COMPANY'S OBJECTIONS TO THE DRAFT PROCLAMATION, 1934, APPLYING THE BECHUANALAND PROTECTORATE MINES AND MINERALS PROCLAMATION, 1932, TO THE TATI DISTRICT.

Under High Commissioner's Proclamation No. 2 of 1911 the Tati Concessions, Limited, its successors and assigns, were confirmed in the full, free and undisturbed possession as owners of the land within the Tati District, which district was defined in Section 1 of that Proclamation.

Section 6 of that Proclamation is as follows:—

> "The right to all Minerals and precious stones under the land in the Tati District is reserved to the Tati Concessions Limited and also the right of prospecting for and working the same but no mining operations shall be carried on under any land on which buildings have been erected or improvements made unless and until compensation has been paid for any loss to be sustained by the owner or owners of such buildings or improvements by reason of such operations and in the case of land reserved for the Rhodesia Railways Limited no prospecting or mining operations shall be carried on in such manner as to interfere with the working and safety of the said line of railway or with any works constructed for the purposes of the said Railway."

and Section 8 of that Proclamation is as follows:—

> "Nothing contained in this Proclamation or in any other law shall authorize the said Company to make or administer laws within the Tati District or to levy any rate tax licence duty or impost therein and all powers of legislation, administration and taxation are reserved to and remain vested in His Majesty's High Commissioner but nothing shall interfere with the rights of the Company as Owners to grant or refuse to grant permission to prospect or mine upon their lands or to impose such conditions upon the grant of any such rights as they may think fit".

The Tati Company, Limited, therefore as the successors in title to the Tati Concessions, Ltd., have absolute ownership of the mineral rights within the Tati District and are entitled to deal with such mineral rights in such manner as they may from time to time think fit.

As stated in the Memorandum of the Company's Objections to the Mining Proclamation of 1932 the Company most strongly protests against confiscatory legislation which would abrogate the lawful rights of its private ownership especially when no provision is made for compensation. It is because it appears to the Company that the proposed Proclamation might, if applied to the Tati District, amount to virtual confiscation without compensation, that the Company has been moved to make the strongest possible protest to His Majesty's Secretary for the Dominions.

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* No. 150. † 10141/223: not printed. ‡ No. 24 in Dominion (South African) No. 5.

To appreciate the Company's objections to the Draft Proclamation it is necessary to recapitulate briefly the history of the Company and how the Company's predecessors in title became the owners of and virtually the Governors of the Tati District.

The Tati District was first commercially explored by white men in the early 1860's.

In the year 1869 Lobengula, the paramount Chief of the Matabele, granted a concession to Sir John Swinburne of a certain district which subsequently became known as the Tati District. This concession was abandoned after a few years owing to the discovery of the diamond fields at Kimberley.

On 2nd September, 1880, Lobengula granted a concession over the Tati District to certain white traders who became the Company's predecessors in title and by the same declaration Lobengula revoked all previous concessions and grants made by him over the district and thereby put an end to the concession previously granted to Sir John Swinburne.

By several grants made between the years 1882 and 1888 Lobengula confirmed and extended the rights and privileges of the Company's predecessors in title over the Tati District, and in fact by a concession dated 4th February, 1887, Lobengula empowered Samuel Howard Edwards to make such rules and regulations as he considered expedient and necessary for the peace and good government of the Tati District and to act as his Representative in that district.

The British Government at this time exercised no rights whatsoever over the territories of Lobengula and regarded Lobengula as an independent sovereign having full authority over his territories and able to enter into Treaties with foreign sovereigns.

On 11th February, 1888, a Treaty of Friendship was signed between Lobengula and the Crown.

The fact that Lobengula was regarded as an independent sovereign is further evidenced by the correspondence which passed between the High Commissioner and Sir Charles Warren, the Special Commissioner for Bechuanaland, and the Secretary of State, the material parts of which are as follows:—

(*a*) Letter dated 23rd January, 1885, from the High Commissioner to Sir Charles Warren:—

"I may point out in this connexion that, as the position of Her Majesty's Government in Bechuanaland does not amount to sovereignty, the waste lands not required by the Chiefs are vested in the Chiefs themselves, and not in the Crown. It would be impossible, therefore, for Her Majesty's Government to appoint a Land Commission for the purpose of alienating land, as they are not possessed of the land to be alienated".

(*b*) Letter dated 14th May, 1885, from the Secretary of State to the High Commissioner:—

"You appear moreover to be generally of opinion that before annexation any titles which might be issued after investigation by British Officers cannot issue in the name of the Queen because the land is not British soil, and can only issue, therefore, in the name of the Chief, or Chief and Council of the tribe to whom the land originally belonged. I concur in this opinion".

This contention is further supported by statements which were made in the House of Commons on 20th December, 1888, by the Under-Secretary of State for the Colonies to Sir John Columb, as follows:—

"Sir John Columb (Tower Hamlets, Bow, etc.) asked the Under-Secretary of State for the Colonies, whether it is true that a person named Rudd has recently been with the Chief Lobengula whose territory has been declared to be within the sphere of British influence, negotiating for a transfer of the whole of the mining rights in that Chief's territory—whether enquiry will be made on the subject; whether as any such transfer, if carried out, would deprive that country of a chief source of revenue for its future government, the High Commissioner will be directed to issue a Proclamation declaring that no such concessions will be recognized by His Majesty's Government unless previously sanctioned by the officer of the Imperial Government administering the territory, and whether it is the intention to appoint an Imperial Officer to reside in that territory; and when?

The Under-Secretary of State for India (Sir John Gorst, Chatham), who replied, said:—The answer to the first paragraph of the question is 'yes'. Inquiry has been made and the High Commissioner has reported that a full account is on its way home. As we have at present no Protectorate in Matabeleland we have no right to interfere with any grant or concession which Lobengula may choose to make, nor have we any right to issue such a Proclamation as

that suggested in the third paragraph of the question. In reply to the last part of the question there is no present intention, nor has Lobengula desired such an Officer."

On the same day, in reply to a question by Mr. Baumann, Sir John Gorst said further:—"As has been frequently explained to the House during the present Session, the protectorate over part of Khama's territory, which is distinct from that of Lobengula, does not include the territory of the latter. The Secretary of State has been informed that a concession of the nature referred to has been granted to a Mr. Rudd. The High Commissioner has no power to sanction concessions granted by Lobengula who is an independent King. It has been stated that £100 per month in addition to a number of rifles will be the consideration for the reported concession. On these points the Secretary of State is in communication with the High Commissioner".

In or about 1885 the Chiefs of Bechuanaland approached the British Government and asked the Government to form a protectorate over Bechuanaland to protect the natives from the encroachment of the Boers.

By an Order in Council dated 9th May, 1891, passed under the authority of the Foreign Jurisdiction Act, 1890, the Crown established the office of High Commissioner of Matabeleland and Bechuanaland. This Order in Council did not vest the ownership of the land itself in the Crown.

During 1894 an Agreement was drawn up between the Secretary of State for the Colonies and the Tati Concession Mining and Exploration Co. Ltd. whereby it was agreed that the Tati District should form part of Bechuanaland Protectorate when the concessions granted by Lobengula were admitted by the Crown and the Company's ownership of all the land in the Tati District was recognized.

Proclamation No. 2 of 1911 confirmed the free full and undisputed possession and ownership of the land in the Tati District by the Company. This Proclamation was issued in order to facilitate an Agreement between the Company and the Rhodesia Railways Ltd. Soon afterwards with a view to entering into certain financial transactions with the Company's Bankers it was considered necessary to register the Company's title. On presentation of the Proclamation No. 2 of 1911 to the Registrar of Deeds at Mafeking the point was taken by him that title could not be registered unless the land were first vested in the Crown. The question was referred to the High Commissioner whose Law Officers advised that the Proclamation No. 2 of 1911 was *ultra vires* the Commissioner and did not operate to confer any new title on the Company as the Tati District had never been vested in the High Commissioner, the High Commissioner of that time himself admitting that this was the case and that the Company would have to rely on the original concessions obtained from Lobengula. In consequence, at the instance of the Company an Order in Council was made on 4th May, 1911, which was published by the High Commissioner by Notice No. 47 of 1911, declaring that the land within the Bechuanaland Protectorate known as the Tati District was vested in His Majesty and that the High Commissioner for South Africa was empowered to grant such land in full ownership to The Tati Concessions, Ltd.

On 6th March, 1914, the Tati Company, Ltd., was incorporated and took over the assets and liabilities of The Tati Concessions, Ltd.

The Tati Company, Ltd., has its registered office in England and is therefore a British Company.

It will be seen from the foregoing summary that the predecessors in title of the Company were owners of the Land and the Mineral Rights in the Tati District by reason of the concessions obtained from Lobengula. At the time of granting the concessions Matabeleland was a foreign sovereign independent state.

The rights of the Company as absolute owners of the Tati District have been fully acknowledged by the Crown.

The two Proclamations referred to were in fact actually superfluous and if they had any effect at all it was merely to confirm that the land in the Tati District was vested in the Company.

It is the contention of the Company that any Proclamation issued by the British Government or by the High Commissioner acting on behalf of the Crown depriving or interfering with the rights of the Company either as regards their ownership of the land or the Company's right to mine and get minerals and precious stones from the soil would amount to an Act of State against a British subject committed outside the United Kingdom, and in consequence the Draft Proclamation which purports to deprive the Company of the Ownership of the land and interferes with the Company's right to mine is *ultra vires* and null and void.

10141/232.

No. 152.

DOMINIONS OFFICE

to

TATI COMPANY, LIMITED.

SIR, Downing Street, S.W.1, 27th March, 1935.

I am directed by Mr. Secretary Thomas to acknowledge the receipt of your letter of the 1st March* enclosing a memorandum setting out your Board's views with regard to the terms of the draft Proclamation applying the Bechuanaland Protectorate Mines and Minerals Proclamation, 1932, to the Tati District.

2. The memorandum is receiving consideration, in consultation with the High Commissioner for Basutoland, the Bechuanaland Protectorate and Swaziland, and a further communication will be sent to you in due course.

I am, &c.,

H. N. TAIT.

10141/255.

No. 153.

DESPATCH

from

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received 17th October, 1936.)

[*Answered by No. 155.*]

(Bechuanaland Protectorate.)

(No. 641.)

SIR, Pretoria, 6th October, 1936.

With reference to my despatch No. 358 of the 4th June† on the subject of the proposed application of the Bechuanaland Protectorate Mines and Minerals Proclamation, 1932 (No. 33 of 1932), to the Tati District, I have the honour to refer to a suggestion made in Sir Harry Batterbee's semi-official letter of the 4th August‡ that, apart from one or two minor matters in regard to which legislation might be desirable, it is not clear whether much practical advantage would be gained by attempting to apply the Proclamation to that District.

2. I have consulted the Resident Commissioner in the matter and he is of opinion that the main objects, viz., the safety and welfare of the native labourers, have been achieved by the issue of the Regulation of Works and Machinery Proclamation, 1934 (No. 40 of 1934), and the Health and Sanitation (Mines and Works) Proclamation, 1934 (No. 54 of 1934)—*see* Sir Herbert Stanley's despatches No. 776 of the 26th September§ and No. 895 of the 3rd November, 1934‖—and that in view of the difficulty of arriving at an agreement with the company in regard to mining legislation it would appear expedient to leave the question in abeyance for the present. Should evidence come to light that the Tati Company are abusing their privileges, Colonel Rey thinks that good grounds would exist for applying the mining law to the District and that the matter could then be further considered.

3. I agree with the above view and suggest that further consideration of the proposed Proclamation should be suspended.

I have, &c.,

CECIL FFORDE,

High Commissioner.

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* No. 151. † 10141/253: not printed. ‡ 10141/253: not printed.
§ 10141/208: not printed. ‖ 10141/216: not printed.

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10141/255.

No. 154.

DOMINIONS OFFICE.

to

TATI COMPANY LIMITED.

SIR, Downing Street, S.W.1, 13th November, 1936.

I am directed by Mr. Secretary MacDonald to refer to the letter from this Department of 27th March, 1935*, regarding the terms of the draft Proclamation which was prepared applying the Bechuanaland Protectorate Mines and Minerals Proclamation, 1932, to the Tati District and to inform you that further careful consideration has been given to the matter in consultation with the High Commissioner for Basutoland, the Bechuanaland Protectorate and Swaziland. I am now to state that having regard in particular to the fact that separate Proclamations (Nos. 40 and 54 of 1934) have been enacted relating to the safety and welfare of the native labourers in the Tati District it has been decided not to proceed at present with the enactment of a Proclamation applying the general Mining law to the District.

2. Mr. MacDonald desires it to be understood, however, that he cannot accept the general contention advanced in the memorandum forwarded in your letter of the 1st March, 1935*, that the proposed Proclamation would have been *ultra-vires* and the above decision must be regarded as without prejudice to the question of applying the Proclamation of 1932 to the Tati District, either in whole or in part, if it should be thought desirable to consider the matter further at a later date in the light of the circumstances then obtaining.

I am, &c.,

H. N. TAIT.

10141/255.

No. 155.

DESPATCH

to

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Bechuanaland Protectorate.)

(No. 537.)

SIR, Downing Street, S.W.1, 13th November, 1936.

I have the honour to acknowledge the receipt of Sir Cecil Fforde's despatch No. 641 of 6th Ocotber† on the subject of the proposal to apply parts of the Bechuanaland Protectorate Mines and Minerals Proclamation, 1932 (No. 33 of 1932), to the Tati District.

2. I note that the Resident Commissioner is of opinion that it would be expedient not to proceed with this legislation for the present and that its main objects, viz., to ensure the safety and welfare of the native labourers, have been achieved by the issue of the Regulation of Works and Machinery Proclamation, 1934, and the Health and Sanitation (Mines and Works) Proclamation, 1934. In the circumstances I am prepared to agree with the view that further consideration of the proposed Proclamation should be suspended, and I have accordingly caused the Tati Company to be informed that it is not proposed to proceed at present with the enactment of the draft Proclamation, this decision being without prejudice to reconsideration of the matter at a later date should the circumstances then obtaining appear to warrant it. A copy of the letter sent to the Company‡ is enclosed.

3. I presume that in the event of circumstances arising in the future which would render the application of the whole or part of the Mines and Minerals Proclamation of 1932 to the Tati District advisable, the question of doing so will be raised by the Bechuanaland Protectorate Administration.

I have, &c.,

MALCOLM MACDONALD.

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* No. 152. † No. 153. ‡ No. 154.

NATIVE PROCLAMATIONS, BECHUANALAND PROTECTORATE

(1) Petition by Acting Chief Tshekedi to His Majesty

10817/83. No. 156.

DESPATCH

from

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received 11th July, 1935.)

[*Answered by No. 167.*]

(Bechuanaland Protectorate.)

(No. 406.)

SIR, Pretoria, 29th June, 1935.

I have the honour to transmit to you a Petition addressed to His Majesty the King from Tshekedi Khama*, Acting Chief and Regent of the Bamangwato Tribe, on the subject of the Bechuanaland Protectorate Native Administration and Native Tribunals Proclamations promulgated on the 4th January, 1935.

2. As the Petition was received at Cape Town shortly before I visited the Bechuanaland Protectorate I considered it desirable to defer transmission of the Petition with my observations until I had had an opportunity of discussing the matter with Tshekedi personally.

3. I found that the attitude of Tshekedi in regard to the two Proclamations was one of definite opposition. This may be due in part to the fear that in the event of incorporation of the Territory with the Union the Proclamations might be utilized as a means of direct intervention by the Administration in tribal concerns. I enclose for your information a copy of a report by Captain Nettelton*, Resident Magistrate at Serowe, on a meeting of the Bamangwato Tribe held just prior to my arrival in the Territory to discuss the Proclamations, in which he expresses this view. But I doubt if this wholly explains Tshekedi's attitude. It may well be also that owing to the conservatism of his tribe he has reason to anticipate some genuine difficulties in putting the Proclamations into operation. Unfortunately too, though he has disclaimed it in private conversation with me, he is still inclined to be obstructive to the wishes of the Administration.

4. The reasons for the introduction of the Proclamations are indicated in the explanatory memorandum issued by my predecessor. There is no justification for the statement made at the Serowe meeting that there was no preliminary consultation with the Tribes. As regards the Bamangwato in particular Sir Herbert Stanley discussed the draft Proclamations in detail with Tshekedi before their final form was settled.

5. In framing the legislation, although recourse has been had to the similar ordinances in force in the Tanganyika Territory and Northern Rhodesia, the aim throughout has been to adapt as far as possible the existing native organization. It has been necessary in the Native Tribunals Proclamation to provide that adequate safeguards should exist to ensure the due and proper administration of justice, but the aim has also been to secure that subject to such safeguards the authority of the native courts should not be open to question on legal grounds. Similarly in the Native Administration Proclamation, while the position of the Chief has been safeguarded, it has also been necessary to provide against the neglect of a Chief to carry out his duties or his failure to exercise his functions in consultation with the tribal Councillors.

6. A beginning is being made by a number of the Chiefs in the Bechuanaland Protectorate in putting the Proclamations into effect and I understand that no difficulties of substance have arisen.

7. After consultation with the officers of the Administration I am of opinion that the Proclamations should be enforced. If experience shows that any modifications are required, amendments can be made after due consideration as and when the need arises.

* Not printed.

8. Turning now to the Petition, it will be observed that it is stated that the repeal of section 8 of the Proclamation of the 10th June, 1891, would constitute not only a breach of faith but a breach of Treaty agreements. I am advised that the Proclamation of the 10th June, 1891, was issued in virtue of the powers vested in the High Commissioner by the Order in Council of the 9th May, 1891, and that in issuing the two recent Proclamations due regard was had to the terms of section 4 of that Order, as is set out in the Preamble in each case. I am of opinion that the recent legislation which has for its aim the improvement of native administration and Native Courts of Justice cannot be regarded either as a breach of faith or of Treaty agreements to the extent, if any, that the latter exist, though certain modifications of verbal undertakings to the Chiefs have of necessity been introduced owing to the lapse of time and to the march of civilization in the Territories.

9. As regards the designation of Councillors mentioned on pages 19 and 20 of the Petition, I understand that, while the Chief alleges that he is not in a position to comply with this requirement, the Councillors are in fact known and that the number of Councillors normally consulted by him is not large. In discussion with Tshekedi I informed him that it rested with him to designate his Councillors; that objection would not be taken to the list of such Councillors being large if he found that its restriction would create embarrassing jealousies or other difficulties; and that he should consult his administrative officer if he felt doubts or required help in the matter.

10. As regards the Tribunals referred to on page 21, I am advised that the Native Tribunals Proclamation follows as closely as possible the present system of trial by Kgotla save as regards some essential limitation of the number of persons entitled to form a tribunal. To such extent then as trial by a tribunal of selected persons has been substituted for trial by the general public the system at present in force has been modified, and it is hoped that in due course the membership of tribunals will tend to be further restricted to persons who are qualified to exercise judicial powers.

11. The proceedings of lineage Kgotlas have not been legalized as these are in the nature of settlement of disputes out of court by members of the families concerned. Under the old system, if one of the parties dissented from the settlement, he had the right to appeal to his ward Kgotla where the matter was tried *ab initio*. The ward Kgotla has now become a Junior Native Tribunal from which as heretofore appeal can be made. The appeal now lies to a Senior Tribal Tribunal and to the Chief's Tribunal. Divisional Kgotlas, which are an innovation introduced by Chief Khama to relieve congestion of cases in the Chief's Court, can be constituted under the Native Tribunals Proclamation as Senior Tribal Tribunals.

12. I consider therefore that due regard has been had to the former system in framing this legislation.

13. The Resident Magistrate under the previous system had power to intervene in native cases where in his opinion the exercise of his jurisdiction is necessary in the interests of peace or for the prevention or punishment of acts of violence to person or property, *vide* section 8 of the Proclamation of the 10th June, 1891. Under section 18 of the Native Tribunals Proclamation powers are now taken for a Magistrate to intervene in certain cases after requiring the Senior Tribal Tribunal concerned to show cause why the matter should not be transferred to his Court and there is also a chain of appeal under section 21 from the Native Courts to the Resident Magistrate's Courts and in serious cases a further appeal lies to the Special Court. No reason is advanced in the petition for denying to an aggrieved person the elementary right of appeal to a higher court and if the Native Tribunals are properly conducted intervention on the part of the Resident Magistrate and appeals to his Court should cause no anxiety to the Chief. It may be mentioned that the power to intervene in certain native cases granted to the magistrate is much less far reaching than the powers of magisterial review of all native cases which it has been found desirable to provide for in many of the African Colonies.

14. The signification of His Majesty's pleasure in regard to the Bechuanaland Protectorate Native Administration Proclamation, 1934, and the Bechuanaland Protectorate Native Tribunals Proclamation, 1934, was conveyed to me in your Bechuanaland Protectorate despatch No. 51 of the 28th of January*: the alternative suggestion in the Petition for the appointment of a commission of inquiry now that the Proclamations have been promulgated after exhaustive discussion with the Chiefs seems calculated merely to create confusion and to compromise the future of the Proclamations. I trust that after consideration of the Petition His Majesty may be pleased to indicate that the Proclamations have been promulgated, after full consultation with the Chiefs and with the

* 10817/77: not printed.

Administration, and in the exercise of the powers vested in the High Commissioner by the Order in Council of the 9th May, 1891, for the better organization of native administration in the Protectorate and for the improvement of the administration of Justice in the Native Courts, and that in the circumstances His Majesty may not be moved to intervene.

15. I shall be glad if the reply to the Petition may be communicated to me by telegraph.

I have, &c.,
W. H. CLARK,
High Commissioner.

10817/87. No. 157.

TELEGRAM

to

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Sent 11 a.m., 7th August, 1935.)

No. 132. Your despatch No. 406 29th June* please inform Tshekedi that his Petition has been laid before the King but that the Proclamations have been promulgated, after full consultation with the Chiefs, for the better organization of Native administration in the Protectorate and for the improvement of the administration of justice in the Native Courts, in the exercise of the powers vested in the High Commissioner for such purposes by the Order in Council of the 9th May, 1891; that His Majesty has already been pleased to signify that they should not be disallowed; and that I have been unable to advise His Majesty to take any action on the Petition.

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(2) Petition by Chief Bathoen Gaseitsiwe to His Majesty

10817/88. No. 158.

DESPATCH

from

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received 8th August, 1935.)

[*Answered by No. 159.*]

(Bechuanaland Protectorate.)

(No. 460.)

SIR,

Pretoria, 26th July, 1935.

With reference to my despatch No. 406 of the 29th June† forwarding a Petition to His Majesty the King from Acting Chief Tshekedi in regard to the Bechuanaland Protectorate Native Administration and Native Tribunals Proclamations, I have the honour to transmit herewith a copy of a Petition‡ addressed to you by Chief Bathoen Gaseitsiwe and others on behalf of the Bangwaketsi Tribe praying that the Proclamations above referred to may be withdrawn and a Royal Commission appointed to examine and report on the internal affairs of the Bechuanaland Protectorate.

2. In forwarding the Petition the Acting Resident Commissioner stated that he had no observations to offer and enclosed a semi-official letter from the Resident Magistrate at Kanye a copy of which is attached‡. I am unable to say how far Mr. Cuzen's views are justified but it is not unlikely that the more progressive members of the Tribe are in favour of the legislation.

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* No. 156. † No. 156. ‡ Not printed.

3. I should be glad to receive your directions as to the reply which should be returned to the Petition. I do not consider it necessary to comment further upon the Petition than to observe that it does not raise any points which were not considered in the drafting of the Proclamations and in respect of which the views of the Chiefs were fully ascertained, and that it is probably designed to support the Petition from Tshekedi to whom Chief Bathoen looks as his leader.

I have, &c.,
W. H. CLARK,
High Commissioner.

10817/88. No. 159.

DESPATCH

to

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Bechuanaland Protectorate.)

(No. 377.)

SIR,

Downing Street, S.W.1, 13th August, 1935.

I have the honour to acknowledge the receipt of your despatch No. 460 of the 26th July*, transmitting a Petition addressed to me by Chief Bathoen Gaseitsiwe and others on behalf of the Bangwaketsi Tribe, praying that the Bechuanaland Protectorate Native Administration and Native Tribunals Proclamations, 1934, may be withdrawn, and that a Royal Commission may be appointed to examine and report on the internal affairs of the Bechuanaland Protectorate.

2. I shall be glad if the petitioners may be informed that I have received their Petition, but that the Proclamations in question have been promulgated, after full consultation with the Chiefs, for the better organization of native administration in the Protectorate and for the improvement of the administration of justice in the Native Courts, and that I see no reason to take any action in the matter.

I have, &c.,
J. H. THOMAS.

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(3) Actions brought against the High Commissioner by Tshekedi and Bathoen

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10817/109. No. 160.

TELEGRAM

from

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received 3.2 p.m., 30th November, 1935.)

[*Answered by No. 161.*]

No. 203. 30th November. My telegram No. 191 of the 22nd November†. On return to Serowe from Capetown, Tshekedi in letter to Magistrate stated that it was in no way his wish to refuse to carry out any instructions from the High Commissioner and that if the Magistrate could suggest any practical way in which the Chief could bring the Proclamations into operation he would immediately do so, though his doing so must not be taken in any way to prejudice legal rights. If the High Commissioner

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* No. 158. † 10817/106: not printed.

desired him to make out list of persons who might be styled councillors by the Administration he would immediately do so but would have to explain that such persons are not in accordance with native custom entitled to advise Chief and therefore could not accurately be called councillors. At the same time Tshekedi handed in document citing the High Commissioner as respondant in action claiming Order declaring that Proclamations 74 and 75, 1934, are no legal force and effect as being *ultra-vires* Order in Council of the 9th May, 1891 seeing that the Proclamations did not respect native laws and customs mentioned in Section 4 of Order and are also unreasonable, void for uncertainty and remove jurisdiction granted to Chiefs by verbal Treaty in 1885 between Warren representing the Queen and the Bamangwato Nation. Application for leave to bring suit is being made in the Resident Commissioner's Court purporting to be under Section 2 of Proclamation 2 of 1896. My Legal Adviser suggests that it is not advisable to the Administration to appear to deny right of hearing of suit but should grant leave whilst expressing no opinion as to whether such suit lies or whether Special Court has jurisdiction on merits or legal aspects of the case. He proposes that the case should therefore go to Special Court and as his position is compromised by association with the proclamations and amendments thereof he suggests that the case should be heard preferably by Judge of the Supreme Court of South Africa if available otherwise by leading member of the South African Bar and that Blakeway Attorney General should be briefed to represent the High Commissioner. If Judge is secured probably only incidental expenses would arise but if Advocate fee would have to be arranged. Fee for Blakeway will also have to be negotiated. I shall be glad if you will approve these proposals by telegram.

10817/109.

No. 161.

TELEGRAM

to

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Sent 4.30 p.m., 16th December, 1935.)

[*Answered by No. 162.*]

No. 187. Your telegram No. 203 30th November*. I approve generally proposed arrangements. I consider that it is important that Tshekedi should not be allowed to utilize the period during which the question is subjudice to delay bringing the Proclamations into force and that if you think it necessary he should be reminded that notwithstanding his legal proceedings the Proclamations are in force and must be carried out without further delay.

10817/109.

No. 162.

SIR EDWARD HARDING (DOMINIONS OFFICE)

to

SIR WILLIAM CLARK (HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND).

MY DEAR CLARK, Downing Street, S.W.1, 19th December, 1935.

With reference to the Secretary of State's personal telegram of the 16th December† relating to Tshekedi's action contesting the legality of the Bechuanaland Protectorate Native Proclamations, we think that it may be useful to you and your legal advisers, in settling the lines to be taken at the hearing of this action, to be in possession of the views which the Legal Advisers here, on the information at their disposal, have formed on this matter.

The Legal Advisers point out that the first question which seems to arise is whether the provisions of Article 4 of the Order in Council of the 9th May, 1891, regarding the respect of native laws and customs are directory or imperative. They themselves are of opinion that the Court might hold that these provisions are directory, not imperative (see Maxwell on the interpretation of Statutes). In that event it would follow that the

* No. 160. † No. 161.

Proclamations would not be void, even though it could be proved that they were inconsistent with native laws, etc., and that the High Commissioner had disregarded the instruction in the Article in question.

Assuming, however, that the Court took the view that these provisions were not directory, but imperative, our Legal Advisers point out that it would then no doubt consider on the evidence and on legal argument the following questions:

(1) whether the High Commissioner had " respected " the laws and customs of 1891; and

(2) if he had not respected them, whether they were incompatible with the due exercise of His Majesty's power and jurisdiction.

As regards (1), they are of opinion that it could probably be established.

(*a*) that the High Commissioner had " respected " (i.e., had had particular regard to) the laws and customs in question, and (*b*) that the mere fact that the Proclamations did not follow them in many respects was no evidence that the High Commissioner had not " respected " them.

As regards (2), if the Court decided that the High Commissioner had not " respected " the laws and customs, our Legal Advisers are of opinion that a case could be made out that, in present day conditions, they were incompatible with the due exercise of His Majesty's power and jurisdiction.

With regard to the line to be taken at the hearing of the case, our Legal Advisers observe that it is necessary to bear in mind that the case will probably come before the Judicial Committee of the Privy Council. Though they think that the Judicial Committee would not construe the Order in Council narrowly and that we ought to succeed if the case is properly presented to them, they point out that the case will be tried here upon the record before the Special Court in the Bechuanaland Protectorate and that its presentation here depends upon how it is presented in the Special Court locally. From this point of view, they have the following observations to offer.

Assuming for the sake of argument that the provisions of Article 4 of the Order in Council are imperative, Tshekedi will have to prove that the Proclamations are inconsistent with native laws or customs by which the civil relations of any native Chiefs, etc., were at the date of the Order in Council regulated. That will constitute a *prima facie* case which the Government must answer. Will it be sufficient (1) to say, " Here are these Proclamations made by the High Commissioner and you must assume therefore that he respected native laws or customs except so far as they were incompatible with the due exercise of His Majesty's power and jurisdiction "; or (2) to put the High Commissioner into the box to say, " I made these Proclamations, I respected native law and custom, and in so far as I departed from it, it was because it was not compatible ", etc.; or (3) must we, in addition to calling the High Commissioner, prove that the native law and custom, altered by these Proclamations, was incompatible, etc.?

As regards (2) our Legal Advisers of course appreciate that the Proclamations were made by Stanley and not by you. They assume that, if it were considered necessary, Stanley would be prepared to give evidence; but they think that the Court might well be prepared to take it from you that from your study of the documents and your knowledge of the situation you were satisfied that in making the Proclamations Stanley had in fact had particular regard to native law and custom, and, in so far as he did depart from it did so only because it was incompatible, etc.

Our Legal Advisers are of opinion that (2) ought to be sufficient, but they doubt whether it is safe to rely on it, and judging, so far as they can, from this end and without having seen the Pleadings, they would feel inclined to let the High Commissioner give that evidence; then to submit that this is conclusive; and then without prejudice to that submission tender evidence in support, so that should the Privy Council have a different view our case will be complete.

Our Legal Advisers consider that this aspect of the matter is of some importance. They point out that we here are aware of the causes i.e., the unsatisfactory Chiefs, the misgovernment, and the scandals, which have made it necessary, in the interests of good government, to subject the native rulers to such safeguards as experience in other African territories has shown to be essential in the interests of good government. As Rey wrote on page 13 of annexure 6 to the first enclosure to High Commissioner's despatch No. 599 of the 11th August, 1933*:

> " It is absurd for the Chief to suggest that the proposed proclamation is based on a misconception of the existing state of affairs. As I have already stated—more than once—we are fully aware of the existing state of affairs, and it is because we are so well aware of it that these Proclamations have been provided. Of course we do not follow the existing practice in all cases: if we did, there would be little object in having the Proclamations at all."

* 10817/19: not printed.

In other words, these Proclamations are necessary in order to improve the existing state of affairs (i.e., the native laws and customs in question); and to preserve such laws and customs practically intact, as Tshekedi apparently wishes to do, would be incompatible with the due exercise (i.e., in the interests generally of peace, order, and good government) of His Majesty's power and jurisdiction. Indeed, the Judicial Committee themselves, in their judgment on Tshekedi's previous appeal against the decision of the Special Court in the Ratshosa case in 1931, may be said to have recognised that this is the case by stating that, if it had been necessary for them to express an opinion on the point, they must have held that one of the native customs, namely, that by which the Ratshosas houses and their contents were burned, was incompatible with peace, order, and good government; and by suggesting that the High Commissioner should take steps to prevent the repetition of such acts.

While we here are familiar with all these considerations our Legal Advisers regard it as important that they should, as far as possible, be brought out in the preliminary proceedings, so that if and when the case comes to the Judicial Committee, we can get the correct atmosphere over to the Court.

You will appreciate that these observations are only put forward for your consideration and that of your Legal Advisers who of course must be responsible for the presentation of the Case. I hope, however, that they may be helpful.

Yours, &c.,
E. J. HARDING.

10817/129. No. 163.

SIR WILLIAM CLARK (HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND).

to

SIR EDWARD HARDING (DOMINIONS OFFICE).

(Received 11th February, 1936.)

[Answered by No. 165.]

(No. 171.)

MY DEAR HARDING, Cape Town, 27th January, 1936.

With reference to Fforde's letter of the 6th January*, I enclose, for your information, a copy of correspondence as noted in the margin†, regarding Tshekedi's action against the High Commissioner.

2. The gist of the matter is that the Special Court has apparently no jurisdiction to try the case which obviously could not be tried by a Magistrate's Court.

3. Various methods of getting over the difficulty have been advanced and are now being considered by Fforde. As regards the proposed issue of a Proclamation to give the Special Court jurisdiction to try suits of this nature Fforde objects to this as he considers that the legislation proposed would have the effect of sanctioning and, indeed, inviting attacks on any Proclamation issued by the High Commissioner, and would in the present case determine in the plaintiff's favour the important issue whether or not legislation by Proclamation in the Territories can be challenged in the Courts.

4. As regards a suggestion that a High Court should be constituted in the Bechuanaland Protectorate Rey has submitted a draft amending Proclamation which Fforde does not approve as he considers that the position is too confused to clarify by amendment of this nature. He thinks that the situation can only be adequately dealt with by issuing a High Court Proclamation on the lines of the Basutoland model, I attach a minute† by him on this point in which he enquires whether it might not be possible to refer the whole matter in litigation to the Judicial Committee of the Privy Council by an Order in Council under the Provisions of 3 and 4 William 4 C41 S4 as was done in the Southern Rhodesia case reported in 1919 appeal cases page 211.

5. I shall be grateful if your legal advisers will consider this point.

* 10817/129: not printed. † Not printed.

6. I mentioned to Stanley the point referred to on page 5 of your letter that the Proclamations were issued by him and that he might be required to give evidence as to his intention when doing so to respect native laws and customs. He has replied as follows:—

> "As regards Tshekedi's case, I should have thought that the signed explanatory statement which I issued with the two Proclamations might be regarded as evidence of my intentions. I have not a copy here with me, but unless my memory is wholly at fault, I feel sure that the statement in question could leave no doubt as to my endeavours to correlate so far as possible the provisions of the Proclamations with native law and custom. And indeed the record of the various conversations which I had with Tshekedi would, I think, suffice to show that this was not merely a figure of speech but a very real endeavour on my part."

Yours, &c.,
W. H. CLARK.

10817/130. No. 164.

DESPATCH

from

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received 18th February, 1936.)

(Bechuanaland Protectorate.)

(No. 68.)

SIR, Cape Town, 5th February, 1936.

With reference to my despatch No. 58 of the 30th January* I have the honour to transmit herewith a copy of the Order of the Resident Commissioner's Court† made in connexion with the application made on behalf of Chief Bathoen Siepapitso Gaseitsiwe.

2. The statement made by the Resident Commissioner as to the jurisdiction of the Court is similar to that made by him in the case of the application by Acting Chief Tshekedi—see my telegram No. 212 of the 10th December, 1935‡.

3. I have signed a warrant of Attorney, as was done in that case, appointing Mr. R. Kelly, Legal Adviser to the Protectorate Administration, to act on behalf of the High Commissioner in the matter.

I have, &c.,
W. H. CLARK,
High Commissioner.

10817/129. No. 165.

TELEGRAM

to

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Sent 10.15 p.m., 26th February, 1936.)

No. 27. Following from Harding:—

Begins.—Your letters of 27th January§, 3rd February‖ and 6th February¶, Legal Advisers here do not think that it would be appropriate to refer matter to Judicial Committee of Privy Council under Act of 1833. Even assuming evidence could be obtained on affidavit or on commission, they do not feel it would be possible to justify a reference in a matter which is clearly one which should be investigated by a court

* 10817/128: not printed. † Not printed. ‡ 10817/113: not printed. § No. 163.
‖ 10817/133: not printed. ¶ 10817/134: not printed.

of law. Legal Advisers suggest difficulty might be met by short *ad hoc* Proclamation giving Special Court jurisdiction to hear and determine present case, mentioning it by name. Such a Proclamation, being confined to present action, would not have effect of giving Special Court general jurisdiction to try suits of this nature. I should explain, however, that Legal Advisers feel that the proposed plea in bar—namely, that no Proclamation purporting to be issued under an Imperial Order in Council, whether it be in accordance with that Order or not, can be challanged in the Courts—cannot be sustained in law, and if sustained would have very undesirable consequences from administrative point of view. There have been many cases in which laws have been challenged as *ultra vires* the Order in Council and the matter was definitely decided by the Privy Council in Jerusalem-Jaffa District Governor v. Suleiman Murra (1926) A.C. 321. See in particular bottom of p. 327.—*Ends.*

10817/177.

No. 166.

TELEGRAM

from

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received 4.40 p.m., 28th November, 1936.)

No. 172. 28th November. Watermeyers Judgment in Tshekedi's case was read in Court at Lobatsi this morning. The Court has held that Plaintiffs' case has failed and has stated that Order(s) will be made dismissing their claim(s) in each case. The Plaintiffs have been ordered to pay general cost of the action but the Judge has allowed Defendant the cost(s) of Hearing incurred from 7th July to 15th July inclusive on the ground that Trial was prolonged by that period owing to Defendants having denied existence of the several native customs set out in the Declaration and issues raised in Denial were found substantially in favour of Plaintiffs. Material findings of the Court are as follows:—

(1) The High Commissioner is not vested under Order in Council of 1891 with despotic or unlimited powers nor is he vested with all powers and jurisdiction which the Crown in England possess. It is possible for the High Commissioner to exceed his powers and such an excess of power is not unchallengeable in a Court of Law in the Protectorate. It is only Proclamation in conformity with the provisions of the Order which are accorded validity " as if contained in the Order ". The preliminary point taken by Defendant was accordingly over-ruled.

(2) The Court decided against the Plaintiffs' contentions that the Proclamations are void for uncertainness and unreasonableness, the Judge observing " it seems clear that this is not a case in which the Court should enquire into the reasonableness of the legislation. It is impossible to set up standard by which reasonableness or unreasonableness may be tested: the powers delegated to the High Commissioner under the Order in Council is a discretionary power of a very wide character ".

(3) The Court held that provision in Section 4 of the Order in Council that High Commissioner shall respect any native law(s) and customs, etc., is not merely directory, it is a condition which the High Commissioner is bound to observe in these Proclamations and if he fails to observe it such Proclamations exceed his authority.

(4) The Court held that Proclamations do in fact alter existing native laws and custom but Order does not prohibit all alteration of any kind but give the High Commissioner a discretion in the matter. The Judge observes " the Order does not prohibit alteration entirely but merely requires the High Commissioner to treat with consideration all native laws and customs except those which are incompatible with due exercise of His Majesty's Powers and jurisdiction. I am inclined to the view that Order in Council gives him a very wide discretion and that the Court cannot declare his legislation out of bounds unless it is satisfied that he failed for some reason to give any consideration at all to native law and custom ". Judge went on to find that " in the present case High Commissioner certainly gave the matter his fullest consideration " and he concludes " the High Commissioner has respected native law and custom in the sense in which that word is used in the Order in Council ".

(5) As to contention that Proclamations violate certain treaty rights, the Judge after dealing with evidence on this subject at a considerable length observed " if exercise

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of the Crown of internal sovereignty for the Protectorate as a matter of fact be determined by evidence then the evidence is not sufficiently complete for the Court to give a decision. The Foreign Jurisdiction Act however provides means whereby the problem can be solved ". The Judge then cited answer of the Secretary of State to the question put to him under Section 4 of the Foreign Jurisdiction Act and observes this answer is conclusive. He says " If His Majesty has unfettered and unlimited power to legislate for the Government of and Administration of Justice amongst native tribes then he can by legislation modify or alter any of native laws and customs which regulate the powers of the Chiefs on native methods of administering justice, and in terms of answer this power is not limited by Treaty." The Judge concludes:—" that disposes of Plaintiffs' claim based upon Treaty rights and it seems to me to dispose also of questions to which I said in an early part of this judgment I would return viz., whether laws and customs which have been altered by Proclamation are incompatible with due exercise of His Majesty's Powers and jurisdiction. The reason why it disposes of that question is because, if His Majesty's powers to legislate for the Government of and Administration of Justice amongst the native is unlimited and unfettered, then any laws or customs which are set up as unalterable by His Majesty's legislative powers represent will of a rival power and jurisdiction and as such [is] (? are incompatible with) due exercise of His Majesty's legislative power and jurisdiction ".

One copy of Judgment was sent semi officially to Machtig by air mail yesterday.

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(4) Application of the Proclamations to the Barolong Tribe

10817/90.

No. 167.

DESPATCH

from

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE AND SWAZILAND.

(Received 12th August, 1935.)

[*Answered by No. 168.*]

(Bechuanaland Protectorate.)

(No. 473.)

SIR,

Pretoria, 31st July, 1935.

With reference to previous correspondence regarding the Bechuanaland Protectorate Native Administration and Tribunals Proclamations, 1934 (Nos. 74 and 75 of 1934), I have the honour to transmit herewith a copy of a letter which has been received by the Acting Resident Commissioner from Chief Letlamoreng K. Montsioa of the Barolong Tribe in which the view is expressed by the Chief that the Proclamations should not be applied to the area of forty-one farms in the Protectorate occupied by that Tribe, on the ground that the area is not a Native Reserve.

2. In submitting a copy of the letter, the Acting Resident Commissioner has observed that the question whether the farms in question should be regarded as a Native Reserve was discussed at the meeting of the Native Advisory Council held in December, 1931 (see pages 15 *et seq* of the Minutes which were forwarded with Sir Herbert Stanley's despatch No. 71 of the 5th February, 1932*). The discussion in question related to the position of the farms under the draft Mining Law, and the official view taken was that the farms were to be regarded as a Native Reserve. They were accordingly included in definition (*u*) in Section 2(1) of the Proclamation which reads as follows:—

> (*u*) " Private land " shall mean all land other than Crown Land or land in any Native Reserve or the forty-one farms known as the Barolong Farms.

3. The Acting Resident Commissioner recommends that the Native Proclamations should be applied to the Barolong Farms area and that, in order that the Chief may function as President of a Senior Tribal Tribunal, he should be regarded as a Chief over a tribal area as defined in Section 2 of Proclamation No. 75. I concur in the above

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* 11451/9: not printed.

view and if you agree I propose to amend the definition of " Tribal area " where it appears in each Proclamation by the addition of the following words:—

" and shall include the area known as the Barolong Farms as described in Schedule B of Proclamation No. 1 of 1896."

4. The following further amendments in the Native Tribunals Proclamation have been suggested by the Acting Resident Commissioner and I propose to incorporate them in the amending Proclamation.

(*a*) a definition of " Magistrate " on the lines of that in Proclamation No. 74.

(*b*) the addition to Section 11 of the words:—

" The costs of service of such order shall be payable on the same basis as would be applicable if the case in question were being heard before the Court of a Resident Magistrate ".

(*c*) the addition of a new sub-section to section 21 reading as follows:—

" (4) Any native who is aggrieved by the decision of any Junior Native Tribunal outside a tribal area shall have the same rights of appeal in the first instance to the Magistrate and thereafter to the Special Court as is set out in sub-section (1) hereof ".

5. I shall be glad to learn at an early date whether the above proposals meet with your approval.

I have, &c.,
W. H. CLARK,
High Commissioner.

Enclosure in No. 167.

Barolong National Office, P.O. The Stadt,
Mafeking, 10th April, 1935.

The Acting Resident Commissioner,
Bechuanaland Protectorate Government,
Mafeking.

MAY IT PLEASE YOUR HONOUR.

I beg leave, on behalf of myself as Chief of the Barolong Tribe, and my Councillors, to record the details of our discussion with the Government Secretary, during Your Honour's absence, on the 8th instant.

1. The discussion was in reference to Proclamations Nos. 74 and 75 of 1934.
2. We advanced the contention that the provisions, generally, of the above quoted Proclamations did not apply to the 41 Barolong Farms, partly for the reason that the area covered by these farms was not a tribal area with the meaning of the Proclamations, and partly that it appears to us that these provisions were not intended to embrace the Natives resident on such Farms.
3. We further submitted that these provisions were something entirely new to us, and did appear to conflict with Native Law and Custom.
4. We observed that the Principal tribes in the Territory have expressed the opinion that these Proclamations will be found to be unworkable.
5. We stressed the point that whilst we were at all times desirous of co-operating with the Government, we wished for the present, to be left undisturbed, and thus permit us the opportunity of determining the workability or otherwise of these Proclamations in such tribal areas to which they apply.
6. We intimated that it has come to our notice that recent Mining Proclamations, and the Index to the Bechuanaland Protectorate Proclamations compiled by Mr. C. Ledeboer, described the Barolong Farms either as a tribal area or Native Reserve. We expressed our objection to this description.
7. We observed further that a good deal of propaganda was being carried on for the incorporation of the Protectorates into the Union. We are aware of the fact that in the Union Native Reserves are classed as Crown Lands. We accordingly felt that if these Barolong Farms should be termed a Tribal Area, such incorporation, should it arise, would seriously prejudice our rights of occupation.

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We trust that the above sets out the substance of the discussion referred to.

We beg leave to ask Your Honour to include in Your Honour's despatch to His Excellency, the High Commissioner, this our most humble representations on the matter.

I have, &c.,
L. K. MONTSIOA,
Chief of the Barolong.

10817/90.

No. 168.

DESPATCH
to
HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE AND SWAZILAND.

[*Answered by No. 169.*]

(Bechuanaland Protectorate.)

(No. 406.)

SIR,

Downing Street, S.W.1, 27th August, 1935.

I have the honour to acknowledge the receipt of your despatch No. 473 of the 31st July* recommending certain amendments to the Bechuanaland Protectorate Native Administration and Native Tribunals Proclamations, 1934.

2. As regards the letter from the Chief of the Barolong Tribe and the proposed amendment of the definition of " Tribal area " in both Proclamations, I enclose a memorandum of the Barolong Farms, which has been prepared in the Dominions Office. In the light of this memorandum I should be obliged if you would consider whether it might not be preferable to meet the point which has arisen by the issue of a Proclamation formally establishing as a Native Reserve the area in the Protectorate occupied by the Baralong, as defined by Proclamation No. 1 of 1896.

3. I concur in the amendments proposed in paragraph 4 of your despatch, subject to the following verbal alterations:—

(*a*) Last line of proposed addition to Section 11: for " before the Court of a Resident Magistrate " read " before a Court of Resident Magistrate ".

(*b*) Fourth line of proposed new sub-sections to Section 21: for " the Magistrate " read " the Court of Resident Magistrate ".

I have, &c.,
J. H. THOMAS.

Enclosure in No. 168.

THE BAROLONG FARMS.

The present native reserves in the Protectorate are as follows:—

Name.	*Area in Square Miles.*	*Estimated Native Population.*	*Estimated No. of Cattle.*	*Established and defined by*
1. Bamangwato Reserve ..	39,000	87,200	280,000	Proclamation No. 9 of 1899 and No. 31 of 1933.
2. Batawana Reserve	34,500	19,500	194,000	Proclamation No. 9 of 1899.
3. Bakwena Reserve	15,000	11,500	35,000	Proclamation No. 9 of 1899 and No. 55 of 1908.
3. Bangwaketse Reserve ..	9,000	26,000	100,000	Proclamation No. 9 of 1899 and No. 55 of 1908.
5. Bakhatla Reserve	3,600	12,000	30,000	Proclamation No. 9 of 1899.
6. Bamalete Reserve	178	4,700	10,500	Proclamation No. 28 of 1909.
7. Barolong Farms†	450	3,600	10,000	—
8. Batlokwa Reserve	56	1,250	4,100	Proclamation No. 44 of 1933.

† So called because the Reserve consists of 41 farms given out in 1895 on individual tenures by the then Chief to his relatives and headmen for the purpose of preventing the alienation of the land to Europeans (see p. 8 of Cmd. 4368). There is in addition, an area, approximately 344 square miles, set aside in the Tati District as a Native Reserve by Proclamation No. 2 of 1911. Its population is estimated at 9,000 and its cattle at 14,000 head.

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* No. 167.

2. When the first five of these reserves were established and defined by Proclamation (374 in African (South) No. 559) the High Commissioner, Lord Milner, wrote that he did " not consider it necessary or expedient to formally create reserves " for the Chiefs of the Bamalete or the Barolong, on the ground that it was " inadvisable to create too large a number of reserves or to attempt to give these Chiefs, who are of decidedly inferior importance and one of whom is a thoroughly bad character (i.e., the Chief of the Barolong), the same status as will be accorded to the five whom I have named by the proclamation of their boundary." The Secretary of State agreed that " the rights of minor Chiefs . . . . to the land they occupy may be conveniently protected and preserved without a formal Proclamation " (490 in African (South) No. 559).

3. In 1909 the High Commissioner submitted a draft Order in Council vesting in the High Commissioner as Crown Lands all those portions of the Protectorate which were not included in the Tati district, with the exception of:—

" 1. Such land as is either

(*a*) included in any native reserve duly set apart by Proclamation or

(*b*) the subject of any grant made by or on behalf of His Majesty; and

2. the forty-one farms known as ' the Barolong Farms ' held by members of the Barolong tribe by virtue of certificates of occupation issued by the Chief Montsioa on the 28th March, 1895."

4. In submitting this draft Order the High Commissioner wrote (151 in African (South) No. 932), with reference to Section 1 (1) (*a*), that he proposed before the Order was issued to issue a Proclamation defining the boundaries of the Bamalete Reserve. He stated that he understood " that this was not done in 1899 because at that time the Bamalete country was bounded north and south by undefined and undetermined concessions obtained from the Bakwena and Bangwaketse tribes respectively "; that these concessions had since been defined and that there was therefore no difficulty in defining the boundary of the Bamalete country; and that the Resident Commissioner recommended that the tribe " should have a reserve established as in the case of the other tribes in the Protectorate." In fact, as will be seen from paragraph 2, the reason given at the time for not including the Bamalete and the Barolong Territories in the 1899 Proclamation was that the Chiefs were of minor importance. No attention, however, was drawn to this point or to the question why, if the Bamalete were to be formally established as a Native Reserve, the same course should not be followed in the case of the Barolong; and the Bechuanaland Protectorate (Lands) Order in Council, 1910, together with Proclamation No. 28 of 1909 establishing and defining the Bamalete Reserve, were issued.

5. A sixth native reserve was established and defined by Proclamation in 1933 when the land known as the Gaberones Block, which belonged to the British South Africa Company and was occupied by the Batlokwa tribe on a lease which expired on the death of their Chief, was transferred by the Company to the High Commissioner in exchange for two strips of land in the Tuli Block.

6. It thus appears that the ground on which the Barolong Territory was excluded from Proclamation No. 9 of 1899, establishing and defining the boundaries of the Native Reserves within the Bechuanaland Protectorate, was that (apart from the character of the Chief himself) the Chief and tribe were regarded as of minor importance. This reason, however, was considered at the time to apply equally to the Bamalete, and it applies even more strongly to the Batlokwa, both of whose Territories have since been established and defined by Proclamation as Native Reserves. The Barolong are represented like the other six tribes on the Native Advisory Council, and for all practical purposes their Territory appears to be regarded and treated as a Native Reserve. In the circumstances it is not clear why their status has never been regularized by formally establishing their Reserve by Proclamation. The point is not entirely academic, since Section 14 of the Schedule to the South Africa Act provides that it shall not be lawful to alienate any land forming part of the native reserves in the Bechuanaland Protectorate from the native tribes inhabiting them.

7. The question of the status of the Barolong Reserve has been raised by the recent Native Proclamations which define the term " tribal area " as meaning " any reserve defined by " the various Proclamations cited in the table in paragraph 1 (including the Tati Reserve) " or any area which has been or may hereafter be defined by law as such reserve." The Chief of the Barolong tribe claims that the provisions of these Proclamations do not apply to " the 41 Barolong Farms " on the ground that the

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area covered by these farms is not a tribal area within the meaning of the Proclamation. The High Commissioner recommends that this point should be met by amending the definition of " tribal area " by the addition of the words:

" and shall include the area known as the Barolong Farms as described in Schedule B of Proclamation No. 1 of 1896."

N.B.—In October, 1895, when the Colonial Office were discussing with the British South African Company on the one hand, and the principal Chiefs of the Protectorate on the other, the question of the transfer of the administration of the Protectorate, or of a part of it, to the Company (Nos. 100, 103, 104, 108, 109, 111 and 121 in African (South) No. 498), the High Commissioner reported that the Chiefs of the Bamalete and of the Barolong were prepared to transfer their Territories to the Company, and with the approval of the Secretary of State these Territories were transferred forthwith to the Company by a Proclamation dated the 18th October, 1895. After the Jameson Raid this Proclamation was repealed by Proclamation No. 1 of 1896, which replaced both Territories under the administration of the High Commissioner.

8. In the light of the above it seems desirable to consider whether the opportunity might not be taken to regularize the somewhat anomalous position of the Barolong Tribe by the issue of a Proclamation formally establishing their Territory, as defined by Proclamation No. 1 of 1896 as a Native Reserve. In this connexion it may be mentioned that the present Resident Commissioner, in his report on Native Affairs in 1930, wrote that:—

" The position of the Tribe on the Barolong Farms is a more serious matter: their position has never been regularized and must be settled soon. I am addressing a separate despatch to Your Excellency on this question, which is a complex one, and in view of the fact that a petition on the subject has been received from the Tribe, the time would appear opportune for attempting a solution " (No. 112 in Dominions (South African) No. 4).

No report, however, appears to have been received on the matter.

9. It should be added that about 6,000 Barolong, owing allegiance to the same Chief as those in the Protectorate, live on the Union side of the Molopo River, which forms the boundary of the Union and the Protectorate.

10817/101. No. 169.

DESPATCH

from

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE AND SWAZILAND.

(Received 12th November, 1935.)

[*Answered by No. 171.*]

(Bechuanaland Protectorate.)

(No. 616.)

SIR, Pretoria, 29th October, 1935.

I have the honour to acknowledge the receipt of your despatch No. 406 of the 27th August* on the subject of various amendments to be made in the Bechuanaland Protectorate Native Administration and Native Tribunals Proclamations, 1934 (Nos. 74 and 75 of 1934).

2. I communicated a copy of your despatch and its enclosure to the Resident Commissioner and I attach a copy of his reply, together with a copy of a minute by my Legal Adviser†.

3. You will observe from the enclosed despatch that, while it would be a convenience from an administrative point of view if the Barolong Farms area was formally established as a Native Reserve, opinion among the tribe is strongly averse from such a course, and the Resident Commissioner recommends that the area should be brought within the scope of the Proclamations in the manner suggested in paragraph 3 of my despatch No. 473 of the 31st July‡.

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* No. 168. † Not printed. ‡ No. 167.

4. As mentioned in paragraph 10 of my despatch No. 529 of the 30th August* legal provision is necessary for constituting a Chief's Tribunal as a Court of Appeal from the Senior Tribal Tribunals when such exist. It would appear advisable to repeal the first paragraph of Section 21 (1) of Proclamation No. 75 and to re-enact it in the following form, embodying the amendments suggested by the Legal Adviser:—

> " 21 (1). Any native who is aggrieved by the decision of any native tribunal may, on giving such notice as is hereinafter prescribed, appeal from the decision of a junior native tribunal to the senior tribal tribunal having jurisdiction and from a decision of the senior tribal tribunal to the Chief's Tribunal as defined by sub-section (1) of section *seven* of this Proclamation, and from the decision of the Chief's Tribunal to the Court of Resident Magistrate, who shall have the right to call for evidence. If in any tribal area there shall be only one Senior tribal Tribunal and such Tribunal is presided over by the Chief, the appeal shall lie from the Junior Native Tribunal to such Chief's Tribunal. And if in any tribal area there shall be no Tribunal presided over by the Chief, the appeal shall lie from the Senior Tribal Tribunal direct to the Court of Resident Magistrate. The Native Tribunal against whose judgment the appeal is lodged shall have the right and may be required by the Magistrate to furnish reasons for its judgment. An appeal shall lie from the Court of the Resident Magistrate to the Special Court only in cases where the amount of the judgment exceeds One hundred pounds or where the combined value of the fine and compensation exceeds Fifty pounds or where sentence of imprisonment for a period exceeding six months or of corporal punishment exceeding five strokes has been imposed."

5. The necessity for validating the acts of courts not constituted under the Native Tribunals Proclamation which may have occurred since the promulgation of that Proclamation was referred to in paragraph 11 of my above-mentioned despatch of the 30th August. The draft of a Proclamation† to be issued for that purpose, with the Legal Adviser's comments thereon†, is included with this despatch.

6. I shall be glad to learn at an early date whether the three draft Proclamations enclosed may be issued. As mentioned in the above-quoted paragraph 11, the promulgation of the validating Proclamation will be deferred until the various Native tribunals have been constituted.

I have, &c.,

H. E. PRIESTMAN

(in the absence and by direction of the High Commissioner).

Enclosure 1 in No. 169.

EXTRACT FROM A DESPATCH NO. 6634/19 FROM COLONEL REY, RESIDENT COMMISSIONER, MAFEKING, TO THE HIGH COMMISSIONER, PRETORIA, DATED 3RD OCTOBER, 1935.

* * * * * * * *

I have given further consideration to the question raised in the Secretary of State's despatch as to the advisability of the issue of a Proclamation establishing the Barolong Farms as a native reserve. From the point of view of administrative convenience there would, of course, be no objection to this course. It would indeed simplify matters, but native opinion among the Barolong is strongly averse to this course, and its adoption would undoubtedly give rise to difficulties with the tribe who prefer to regard themselves as " owners of farms " rather than members of native reserves.

The relations existing between the occupiers of the " farms " and the Chief are peculiar to that district, and Dr. Molema—himself a Morolong—with whom I have discussed the matter, confirms emphatically the views I have expressed above.

There seems to me no object in antagonizing the Barolong unnecessarily, and I would accordingly recommend strongly that the existing procedure be followed. The Barolong have not the same objection to individual Proclamations containing a statement to the effect that the " Barolong Farms will be regarded as a tribal area for the purpose of the Proclamation," but they feel there is a great difference between this and formally establishing them in a Proclamation as a Native Reserve to which, as I have said above, they have strong objection.

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* 10817/96: not printed. † Not printed.

The amendment contained in the draft Proclamation submitted to the Secretary of State and approved by him should therefore, in our view, stand, and I should be glad if this Proclamation could be issued as soon as possible as the present position is most unsatisfactory. The Barolong are legally outside the two Proclamations and are fully alive to this fact. Consequently we are unable to make progress in the matter and it is most important that we should.

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10817/112.

No. 170.

DESPATCH

from

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received 6th December, 1935.)

(Bechuanaland Protectorate.)

(No. 688.)

SIR, Pretoria, 26th November, 1935.

With reference to my despatch No. 616 of the 29th October* and to my telegram No. 196 of the 25th November† regarding the proposed amendment of the Bechuanaland Protectorate Native Administration and Native Tribunals Proclamations, 1934 (Nos. 74 and 75 of 1934), I have the honour to transmit herewith a copy of a further despatch from the Resident Commissioner.

2. You will observe that Colonel Rey has suggested an alternative wording for Section 7 (1) of the latter Proclamation dealing with the status of the Senior Tribal Tribunal, and has also recommended that the revised Section 21 (1) should be in the form of the draft submitted with his despatch.

3. My Legal Adviser, who has been consulted, states that he is in complete agreement with the views of the Resident Commissioner and with the reasons which he has given for his conclusions, adding that he thinks the suggested amendments are a decided improvement upon the previous draft.

4. I propose therefore that the new wording suggested by the Resident Commissioner for Sections 7 (1) and 21 (1) of the Proclamation should be adopted.

I have, &c.,

W. H. CLARK,

High Commissioner.

Enclosure in No. 170.

(No. 6634/19.)

SIR, Resident Commissioner's Office, Mafeking, 15th November, 1935.

With reference to Your Excellency's despatch of the 29th October, No. 2774, transmitting a copy of a minute by Sir Cecil Fforde and of a despatch addressed to the Secretary of State on the subject of the proposed amendments to be made in the Bechuanaland Protectorate Native Administration and Native Tribunals Proclamations, 1934, I have the honour to offer the following observations.

2. I am not in entire agreement with the proposals suggested by Your Excellency's Legal Adviser for meeting the difficulty which admittedly arises in order to give effect to the undertaking to provide appeals from Senior Tribal Tribunals to the Chief's Tribunal. I think some misconception has arisen owing to the nature of the definition in Section 7 (1) of the Proclamation which was in fact altered several times following discussion with the then High Commissioner, Sir Herbert Stanley, at Cape Town.

3. The point, I think, to bear in mind is that the Chief's Tribunal is a Senior Tribal Tribunal and does not cease to be such merely because it is called the Chief's Tribunal.

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* No. 169. † 10817/108: not printed.

The Chief's Tribunal is merely the senior of the Senior Native Tribunals. I have no objection to the first additional paragraph recommended by Your Excellency's Legal Adviser although it would appear redundant in view of the amendment to Section 7 (1) which I propose hereunder. I am, however, strongly opposed to the second paragraph, for reasons which are explained later in this despatch.

4. I suggest accordingly that Section 7 (1) should read as follows:—

"7. (1) In each tribal area there shall be one or more Tribunals which shall be known as Senior Tribal Tribunals, the members of which shall be nominated by the Chief from amongst the members of the Tribal Council constituted under Section *five* of the Bechuanaland Protectorate Native Administration Proclamation, 1934. The Senior Tribal Tribunal in a tribal area which shall be presided over by the Chief, or his deputy duly authorized to act in that capacity, shall be known as the Chief's Tribunal.

Every other Senior Tribunal shall be presided over by a Headman appointed by the Chief.

The names of the persons constituting the Tribunal in each case dealt with by it shall be duly recorded."

5. If this definition is accepted it is obvious that there will always be a Senior Tribal Tribunal presided over by the Chief however many such Senior Tribal Tribunals there may be in a native area.

6. Furthermore the definition as at present drafted, owing to repeated alterations now reads in such a way as to suggest that the Chief has got to preside over every Senior Tribal Tribunal in his district either in person or through a deputy. This of course was never contemplated and is obviously impossible.

7. I would further point out that it would be undesirable to suggest the possibility of there being no Tribunal presided over by the Chief in any area. This would lead to a most unfortunate position if it occurred. Even, however, if the Chief did not in person preside over his Tribunal his Tribunal would always be regarded by the natives as the Chief's Tribunal according to their ancient law and custom, and the proposed amendment which does not recognized this fact would undoubtedly cause opposition by the Chiefs and Tribes concerned.

8. I accordingly submit a redraft of the first paragraph of Section 21 (1) of Proclamation No. 75 and I have omitted the sentence commencing in the 16th line and ending in the 20th line, which refers to the possibility of there being no Tribunal presided over by the Chief.

I have, etc.,
C. F. REY.
Resident Commissioner.

His Excellency
The High Commissioner,
Pretoria.

10817/112.

No. 171.

TELEGRAM

to

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Sent 8.30 p.m., 12th December, 1935.)

No. 186. Your despatch No. 616 of 29th October*. Proposals approved as modified by your despatch No. 683 of 26th November†.

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* No. 169. † No. 170.

10817/127.

No. 172.

DESPATCH

from

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Bechuanaland Protectorate.)

(Received 8th February, 1936.)

(No. 49.)

SIR, Cape Town, 27th January, 1936.

With reference to Sir Cecil Fforde's despatches No. 736 of the 23rd December, 1935*, and No. 37 of the 20th January†, I have the honour to transmit herewith a copy of a despatch from the Resident Commissioner of the Bechuanaland Protectorate reporting that the provisions of the Native Administration and Native Tribunals Proclamations Nos. 74 and 75 of 1934 have been carried into effect in the Barolong Farms area and in the Batawana Reserve, and that the Proclamations may be regarded as now in operation in every district of the Territory except the Ngwato Reserve.

I have, &c.,
W. H. CLARK,
High Commissioner.

Enclosure in No. 172.

(No. 7630/7A.)

SIR, Resident Commissioner's Office, Mafeking, 17th January, 1936.

I have the honour to submit the following report as regards the progress of the Native Administration Proclamations Nos. 74 and 75 in N'gamiland (The Batawana Reserve) and on the Barolong Farms.

2. As regards N'gamiland I have already reported that the Acting Chief Dibolaen had submitted to the Acting Magistrate, Mr. Arrowsmith, a list of Councillors in accordance with Section 5 (1) of Proclamation No. 74 in spite of a certain amount of preliminary hesitation on the part of the Acting Chief due to the influence of Tshekedi.

There are 147 names on the list but it is safe to say that no more than 20 at the most are in Maun at any one time. The Chief's Tribunal is of course constituted from amongst them.

3. The Magistrate very wisely agreed to delay the commencement of operation of the Tribunals in view of the fact that the ploughing season was in full swing and that practically all the inhabitants of Maun had left for their lands, there being only two old men left in that village out of all the Councillors. The Acting Chief himself was anxious to leave Maun to arrange for his ploughing which he had been unable to do last year.

4. The Acting Chief has submitted to the Magistrate a letter in the following terms:—

"With reference to the matter of carrying out His Excellency's orders regarding the starting of the Native Administration and Native Tribunals Proclamations, I have the honour to definitely state that the Senior and Junior Tribunals will begin to function from the 15th January next.

It is impossible to start now as the councillors have all gone to plough.

It was my intention to take over the book for recording cases but I find it better to await the actual date of starting."

5. There will only be one Senior Tribunal in the Reserve, namely that at Maun; Junior Tribunals have been constituted in the Tsau, Mohembo and Kabamokone areas under the present headmen of those parts.

6. As regards the Barolong Farms as Your Excellency is aware nothing could be done in this district until the amending Proclamations applying Proclamations 74 and 75 to the Barolong Farms had been issued. As soon as they were issued, that is in December last, the necessary steps were taken for the Tribunals to be organized and to

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* 10817/122: not printed. † 10817/126: not printed.

function, and I am now glad to be able to report that a list of 67 Councillors has been submitted and that one Senior Tribunal, that is the Chief's Tribunal, and 27 Junior Tribunals have been agreed upon and have been or are being constituted. If it is found desirable to have further Senior Tribunals these will be established as found necessary.

7. The result of the foregoing is that it may now be said that the Proclamations are functioning in every district of the Territory except the Ngwato Reserve, a result which, in view of the difficulties created by Acting Chief Tshekedi, may be said to reflect much credit upon the Magistrates and other Administrative Officers in the various districts, and to dispose of the absurd contention that the Proclamations were unworkable and could not be operated.

I have, &c.,

C. F. REY,

Resident Commissioner.

His Excellency
The High Commissioner,
Cape Town.

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(5) His Majesty's jurisdiction in the Protectorate

10817/172.

No. 173.

DESPATCH

from

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received 31st August, 1936.)

[Answered by No. 174.]

(No. 551.)

SIR,

Pretoria, 21st August, 1936.

I have the honour to transmit herewith, for your consideration, a letter from the Registrar of the Special Court of the Bechuanaland Protectorate addressed under flying seal to the Under Secretary of State for Dominion Affairs enclosing questions framed by the Presiding Judge of that Court for decision by a Secretary of State under section 4 of the Foreign Jurisdiction Act, 1890.

I have, &c.,

CECIL FFORDE,

High Commissioner.

Enclosure in No. 173.

Resident Commissioner's Office, Mafeking,

19th August, 1936.

SIR,

I have the honour to inform you that in the course of an action tried before the Special Court for the Bechuanaland Protectorate a question has arisen as to the extent of His Majesty's jurisdiction in the Bechuanaland Protectorate. Under the Foreign Jurisdiction Act (53 & 54 Vict. Ch. 37), the Court has framed certain questions which it has desired me to submit to you for an answer in terms of section 4 of that Act. The questions are contained in the document enclosed herewith signed by the presiding Judge.

I have, &c.,

H. H. PRICE,

Registrar: Special Court Bechuanaland Protectorate.

SPECIAL COURT HOLDEN AT LOBATSI, BECHUANALAND PROTECTORATE.

Question framed in terms of section 4, Foreign Jurisdiction Act (53 & 54 Vict. Ch. 37).

What is the nature and extent of His Majesty's jurisdiction within the Bechuanaland Protectorate?

The particular point with regard to His Majesty's jurisdiction upon which information is sought can be put as follows:—

Excluding the limitations imposed by the Foreign Jurisdiction Act itself, does His Majesty by virtue of his jurisdiction possess full internal sovereignty in the Protectorate, with unfettered and unlimited power to legislate for the government of and administration of justice among the native tribes within the Protectorate, or is His legislative power limited in any way by treaty or agreement?

In particular is it limited in any way by treaty or agreement within the territory occupied by the Bamangwato and Bangwaketsi tribes?

In this connexion the Court desires to draw attention to Blue Book C. 4588 of 1885 and to Documents Nos. 35 and 36 contained in Blue Book C. 7962 of 1896.

E. F. WATERMEYER,

Presiding Judge.

10817/175.

No. 174.

DESPATCH

to

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(No. 516.)

SIR,

Downing Street, S.W.1, 26th October, 1936.

I have the honour to acknowledge the receipt of Sir Cecil Fforde's despatch No. 551 of the 21st August* and to enclose a letter addressed to the Registrar of the Special Court of the Bechuanaland Protectorate, containing my answer to the question framed by the Presiding Judge of that Court for my decision under section 4 of the Foreign Jurisdiction Act, 1890.

I have, &c.,

MALCOLM MACDONALD.

Enclosure in No. 174.

SIR,

26th October, 1936.

I am directed by Mr. Secretary MacDonald to acknowledge the receipt of your letter of the 19th August† and to enclose the answer of the Secretary of State to the question submitted by the Honourable Mr. Justice Watermayer for decision in terms of section 4 of the Foreign Jurisdiction Act, 1890.

I am, &c.,

H. N. TAIT.

The Registrar,
Special Court,
Bechuanaland Protectorate.

SPECIAL COURT HOLDEN AT LOBATSI, BECHUANALAND PROTECTORATE.

Answer to question framed in terms of section 4 of the Foreign Jurisdiction Act (53 & 54 Vict. Ch. 37).

I am of opinion that the words "full internal sovereignty" are inapt to describe His Majesty's powers in a Protectorate, but His Majesty has unfettered and unlimited power to legislate for the government of and administration of justice among the native

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* No. 173. † Enclosure in No. 173.

tribes in the Bechuanaland Protectorate, and this power is not limited by treaty or agreement. That part of the question which relates to the territory occupied by the Bamangwato and Bangwaketsi tribes is covered by the above statement.

To prevent any misunderstanding, I think it right to add that, in giving the above answer, I am in no way intending to convey any opinion on the question whether the legislative powers conferred on the High Commissioner by the Order in Council of the 9th May, 1891, are coincident with the full powers of the Crown or are in any way limited by the terms of the Order in Council itself. That issue and the further issues which might arise as to whether, on the evidence given, the two Proclamations in question in this case were or were not within the powers conferred on the High Commissioner are of course entirely matters for the Court.

MALCOLM MACDONALD.

RESIDENT COMMISSIONER, BECHUANALAND PROTECTORATE

Petition from member of the European Advisory Council for the selection of a Union Government Official

10653/146. No. 175.

TELEGRAM

from

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received 6.40 p.m., 18th September, 1936.)

[Answered by No. 176.]

No. 136. 18th September. Confidential. A Petition addressed to you signed by all members of the Bechuanaland Protectorate European Advisory Council has been received suggesting that to obtain goodwill and confidence of the natives successor to Rey should be Union Government official selected by you from list of names to be submitted by the Union Prime Minister. Petitioners have sent copy of the Petition to you direct and also to General Hertzog. Petition with my comments will be forwarded by to-day's air mail but should the matter be mentioned to me by General Hertzog I propose, if you see no objection, to tell him that I consider and have informed you to this effect that this proposal is most undesirable as if adopted would revive suspicion amongst the native population and would be most harmful to policy of improvement of co-operation which it is the desire of both His Majesty's Government and the Government of the Union to promote: that as he is aware these petitioners representing only a small body of Europeans are not in a position to gauge native opinion of the Territories or to put forward proposals on matters of policy affecting the Territories as a whole.

10653/146. No. 176.

TELEGRAM

to

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Sent 10 p.m., 22nd September, 1936.)

No. 115. Confidential. Your telegram No. 136, 18th September, confidential*, I do not regard proposal in Petition as practicable, but if matter is raised with you by General Hertzog before text of Petition has been received and considered here I think that best course would be for you to explain to him that you are not yet in a position to state views of Secretary of State but that your own feeling is as stated in your telegram.

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* No. 175.

109

10653/147. No. 177.

DESPATCH

from

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received 29th September, 1936.)

[Answered by No. 178.]

(Bechuanaland Protectorate.)

(No. 612.) (Confidential.)

SIR, Pretoria, 18th September, 1936.

With reference to my confidential telegram No. 136 of to-day*, I have the honour to transmit herewith a copy of a despatch from the Resident Commissioner of the Bechuanaland Protectorate forwarding a Petition addressed to you by the members of the European Advisory Council of the Protectorate suggesting that the question of co-operation between the Union of South Africa and the High Commission Territories should be discussed by the High Commissioner with the Prime Minister and in particular that a Union Government official should be selected to fill the post of Resident Commissioner when it becomes vacant upon the retirement of Lieutenant-Colonel Rey.

2. As indicated in my telegram I consider the latter suggestion to be impracticable for obvious reasons and it would certainly have the effect of reviving the suspicions among the native population caused by General Hertzog's recent speeches. It would not assist the interests of the Union in any way and would retard the co-operation movement.

3. As a reasoned reply might only provide material for comment in the Press you may feel disposed merely to take note of the proposal.

I have, &c.,
CECIL FFORDE,
High Commissioner.

Enclosure in No. 177.

Resident Commissioner's Office, Mafeking,
15th September, 1936.

SIR,

I have the honour to forward herewith in original (with three copies which have been made in this office) a petition which has been received to-day from the Members of the European Advisory Council.

2. In the absence of His Honour the Resident Commissioner in Johannesburg, to whom a copy of the petition has been sent, the document is forwarded without comment.

I have, &c.,
C. N. A. CLARKE,
In the absence of the
Resident Commissioner.

His Excellency
The High Commissioner,
Pretoria.

7th September, 1936.

PETITION BY THE EUROPEAN ADVISORY COUNCIL OF THE BECHUANALAND PROTECTORATE.

To the Right Honourable Malcolm MacDonald, M.P.,
His Majesty's Secretary of State for Dominion Affairs.

The undersigned Members of the European Advisory Council humbly present the following Petition for your earnest consideration.

The object of this Petition is to enlist the sympathy and active assistance of you, Sir, to the furtherance of the co-operation movement between this Territory and the Union of South Africa. In view of the discussion between the Secretary of State for Dominion Affairs, and the Prime Minister of the Union of South Africa, and in view of the fact that His Honour the Resident Commissioner, Lt. Colonel C. F. Rey, C.M.G., retires from the service early next year, we, the undersigned, respectfully suggest that a discussion take place between His Majesty's High Commissioner for the Native Territories, and the Right Honourable the Prime Minister of the

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* No. 175.

Union of South Africa, to endeavour to find a solution to the present difficulties in connexion with co-operation between the Union Government and the Administration of the Territories.

In particular it appears to us that an essential condition of the success of a policy of incurporation is that the native population should feel that the Union Government is working in concert with the local Administration with a real and generous desire to develop and improve conditions in the Territory, and we would respectfully point out, that to this day, no true conception of what incorporation would mean to natives has ever been put before them by the Administration.

It is therefore respectfully suggested that in order to obtain the goodwill and confidence of the natives the next Resident Commissioner appointed should be a Union Government Official, and the Prime Minister of the Union of South Africa should be asked to submit names of desirable Union Officials for the position of Resident Commissioner, the final decision to be left to the Secretary of State for Dominion Affairs.

We are, Sir,
Your humble Petitioners.

Signature.		*Representing*
Robt. McFarlane	..	Tati.
L. S. Glover	..	Gaberones.
C. W. Martin	..	Tuli Block.
C. K. Going	..	Ghanzi & Crown Lands.
Robert L. Ciring	..	Nominated unopposed for Lobatsi.

10653/147.

No. 178.

DESPATCH

to

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

[*Answered by No. 179.*]

(Bechuanaland Protectorate.)

(No. 519.) (Confidential.)

SIR,

Downing Street, S.W.1, 27th October, 1936.

I have the honour to acknowledge the receipt of Sir Cecil Fforde's despatch No. 612, confidential of the 18th September* transmitting a petition from the members of the European Advisory Council of the Bechuanaland Protectorate.

2. I am not aware whether General Hertzog, to whom I note that a copy of the petition was forwarded by the Council, has mentioned the matter to you or to Sir Cecil Fforde: but, subject to any discussion which may have been held with him, I should be glad if you would cause a reply to be sent to the Council stating that I have received their Petition and that, while I am glad to see that the Council are in agreement with the policy outlined in the *aide-mémoire* published last year, which contemplates the closest possible co-operation between the Protectorate Administration and the Union Government (a policy which is already being put into effect), I do not consider it practicable to limit the field of choice of the next Resident Commissioner as suggested in the last paragraph of the petition.

I have, &c.,

MALCOLM MacDONALD.

10653/151.

No. 179.

DESPATCH

from

HIGH COMMISSIONER FOR BASUTOLAND, THE BECHUANALAND PROTECTORATE, AND SWAZILAND.

(Received 16th December, 1936.)

(Bechuanaland Protectorate.)

(No. 775, Confidential.)

SIR,

Pretoria, 5th December, 1936.

With reference to your confidential despatch No. 519 of the 27th October† and subsequent semi-official correspondence, I have the honour to transmit herewith a copy

* No. 177. † No. 178.

of a despatch which I have addressed to the Resident Commissioner of the Bechuanaland Protectorate on the subject of the reply to be returned to the petition* which the Members of the European Advisory Council addressed to you on the 7th September.

2. I also enclose, for your information, a copy of a letter which I have addressed to General Hertzog to whom a copy of the petition had been communicated by the Members of the Council.

I have, &c.,

W. H. CLARK,

High Commissioner.

Enclosure 1 in No. 179.

(Bechuanaland Protectorate.)

(No. 3078.)

SIR,

Pretoria, 5th December, 1936.

I have the honour to refer to your despatch No. 8202/13 of the 15th September, and connected correspondence regarding the petition addressed to the Secretary of State by the Members of the European Advisory Council of the Bechuanaland Protectorate on the 7th September.

2. I shall be obliged if you will cause the Members of the Council to be informed that the Secretary of State has received their petition and has directed me to intimate that, while he is glad to see that the Council are in agreement with the policy outlined in the *aide-mémoire* published last year, which contemplates the closest possible co-operation between the Protectorate Administration and the Union Government (a policy which is already being put into effect), he cannot concur with the suggestion as regards the choice of the next Resident Commissioner which was put forward in the last paragraph of the petition.

I have, &c.,

W. H. CLARK,

High Commissioner.

His Honour,
The Resident Commissioner
of the Bechuanaland Protectorate.

Enclosure 2 in No. 179.

MY DEAR PRIME MINISTER,

Pretoria, 5th December, 1936.

You may remember receiving from the Members of the European Advisory Council of the Bechuanaland Protectorate a copy of a petition which they addressed to the Secretary of State on the 7th September. The petition suggested that I should discuss with you the question of co-operation between the Union of South Africa and the High Commission Territories, and it contained a recommendation that a Union Government Official should be selected to fill the post of Resident Commissioner in the Protectorate when it becomes vacant upon the retirement of Lieutenant-Colonel Rey.

You may like to know that the Secretary of State has considered the petition and has directed that the Members of the Council should be informed that, while he is glad to see that the Council are in agreement with the Policy outlined in the *aide-mémoire* published last year, which contemplates the closest possible co-operation between the Protectorate Administration and the Union Government (a policy which is already being put into effect), he cannot concur with the suggestion as regards the choice of the next Resident Commissioner which was put forward in the last paragraph of the petition.

Mr. Macdonald adds that he feels sure that you will agree that apart from any other considerations the course suggested would be particularly inexpedient at the present juncture.

Yours, &c.,

W. H. CLARK.

General The Honourable
J. B. M. Hertzog, K.C., M.P.

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* Enclosure in No. 177.

SWAZILAND
Settlement of Jews in

F. 20741/27. No. 180.

MR. C. T. TE WATER (HIGH COMMISSIONER FOR THE UNION OF SOUTH AFRICA)

to

MR. J. H. THOMAS (SECRETARY OF STATE FOR DOMINION AFFAIRS).

[Answered by No. 181.]

(Confidential.)

Trafalgar Square, W.C.2,
4th September, 1935.

MY DEAR SECRETARY OF STATE,

I was recently informed by a friend in London that negotiations were taking place which had for their object the setting up in Swaziland of a Jewish colony. My informant stated that the proposal was that large land-owners in Swaziland should be approached with a view to their offering the Jewish Land Settlement Organization a block of land, in extent between half a million and a million acres, for the settlement of five thousand Jewish families.

I at once made inquiries at the Dominions Office as to whether His Majesty's Government in the United Kingdom had been approached in the matter, but was informed that no formal approach had been made.

As I considered the matter of sufficient interest to my Government, I reported it to the Prime Minister, and I have now been instructed to ascertain whether His Majesty's Government in the United Kingdom have been approached by the above-mentioned organization. Informal inquiries on the subject go to show that His Majesty's Government in the United Kingdom have received no request from the Jewish Land Settlement Organization, but I am nevertheless desired to bring to your notice, for the confidential information of His Majesty's Government in the United Kingdom, that the establishment of such a Jewish colony as is referred to above would be most embarrassing to the Union Government.

As you may be aware, there exists at present, most unfortunately, an undercurrent of strong anti-semitic feeling in certain sections of the Union community, and my Government feel that the settlement of any large number of Jews in Swaziland would have the effect of rousing still further the anti-semitic sections and that the scheme would accordingly not be in the interests of our South African Jewish Nationals.

I am to add that my Government would therefore appreciate it if His Majesty's Government in the United Kingdom would discourage any proposal which may be put before them which has as its object the settlement of any large colony of Jews in Swaziland.

Yours, &c.,
C. T. TE WATER.

F. 20741/27. No. 181.

MR. J. H. THOMAS (SECRETARY OF STATE FOR DOMINION AFFAIRS)

to

MR. C. T. TE WATER (HIGH COMMISSIONER FOR THE UNION OF SOUTH AFRICA).

(Confidential.)

Downing Street, S.W.1,
9th September, 1935.

MY DEAR HIGH COMMISSIONER,

I have your letter of the 4th September* and have noted the views of the Union Government regarding the suggestions which have been made as to the settlement of a large number of Jews in Swaziland. No formal approach has yet been made to His Majesty's Government in the United Kingdom in this matter, but I can assure you that, when the time comes to consider any formal proposals, the fullest weight will be given to the views of the Union Government.

Yours, &c.,
J. H. THOMAS.

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* No. 180.

F. 20741/27. No. 182.

LORD HARTINGTON (UNDER SECRETARY OF STATE FOR DOMINION AFFAIRS)

to

MR. P. EMRYS-EVANS, M.P.

MY DEAR EMRYS-EVANS,

Downing Street, S.W.1, 29th April, 1936.

I have looked into the question raised by the memorandum enclosed in your letter of the 6th April* regarding a scheme for Jewish settlement in Swaziland.

I find that your correspondence with J. P. L. Thomas last year was forwarded to the High Commissioner who, after consulting the local authorities, has reported on the health conditions and agricultural possibilities of the area selected for the site of the proposed settlement.

From the health point of view the High Commissioner reports that the proposed settlement would be situated in intensely malarial country and that heavy expenditure would therefore be necessary on anti-malarial measures. The Commission who visited Swaziland in 1931 expressed the opinion in their Report (Cmd. 4114) that even with modern precautions, continued residence in this area would be inadvisable for women and children. It would clearly be a heavy responsibility to settle large numbers of people from central Europe in conditions of this kind.

From the agricultural point of view the High Commissioner reports that the land in question would be unsuitable for settlement without large irrigation works. The question of irrigation is discussed at some length in the Swaziland Commission's report, from paragraph 127 of which it will be seen that expert opinion in South Africa emphasises that more experience of irrigation under Swaziland conditions is needed before large settlement schemes can be recommended. The Commission observe in paragraph 131 that " this view will be strongly supported by all disinterested people. It would be neither wise nor right to enter into large schemes involving the welfare of numerous settlers without a much fuller experience than is possessed to-day . . . . . close settlement in the Lebombo flats under irrigation conditions might easily prove intolerable to European women and children ".

Apart from these considerations I fear that it is not possible to agree with the views expressed in the memorandum on the prospects of European settlers of making a living in Swaziland. Under existing conditions great difficulty is experienced in finding a market for the exportable produce of the present population. This difficulty would of course be much intensified by a great increase in that element of the population which depends for its livelihood on the sale of agricultural produce.

In the light of these considerations I am afraid that it would be impossible for the Secretary of State to give his approval to such a scheme.

Yours, &c.,
HARTINGTON.

F. 20741/27. No. 183.

DOMINIONS OFFICE

to

MR. H. R. MARSHALL.

DEAR SIR,

Downing Street, S.W.1, 14th July, 1936.

I am desired by Mr. Malcolm MacDonald to state that the points which you raised at your recent interview at the Dominions Office in connexion with the scheme for Jewish settlement in Swaziland have been carefully considered. Mr. MacDonald understands that notwithstanding the considerations to which attention was called in Lord Hartington's letter to Mr. Emrys-Evans of the 29th April†, you are advised that the promoters of the scheme would be prepared to face the risks involved in proceeding with it provided that they could be assured that no restrictions would be placed on the immigration into Swaziland of the proposed settlers. You will appreciate however that even though the proposals may not involve any immediate assistance on the part of the Swaziland Administration, the Government could not divest itself of all responsibility in the matter, and the Secretary of State feels, in view of the advice which he has

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* F. 20741/27: not printed.

† No. 182.

received from the local authorities, that he could not acquiesce in proposals involving the introduction into the Territory of large numbers of settlers under conditions which at present make the success of the scheme extremely doubtful.

Mr. MacDonald fears therefore that he could not give any assurance that it would be possible to permit the immigration on a large scale of Europeans into Swaziland in the circumstances contemplated.

Yours, &c.,

J. J. S. GARNER.

TSHEKEDI (ACTING CHIEF AND REGENT OF THE BAMANGWATO TRIBE)

Suspension of

10817/44.

No. 184.

DOMINIONS OFFICE

to

THE ANTI-SLAVERY AND ABORIGINES PROTECTION SOCIETY.

SIR, Downing Street, 1st February, 1934.

I am directed by Mr. Secretary Thomas to refer to the statement which he made, when he received the recent deputation from your Society, in regard to the question of the suspension of the Acting Chief Tshekedi.

2. Mr. Thomas then explained that he regarded the whole incident as finally closed. While, however, he was not prepared to reopen it, it would not be allowed in any way to prejudice the future relations of the Government with the Acting Chief; he regarded the Acting Chief as an upright and straightforward man who was trying to do the best he could for his people. It was his desire that the local Administration should continue to work in the most friendly and amicable way with the Acting Chief for the purpose of promoting the best interests of the Bamangwato.

3. A copy of this letter is being sent to the High Commissioner for South Africa.

I am, &c.,

E. J. HARDING.

UNION OF SOUTH AFRICA

Native Legislation

11007/53.

No. 185.

MEMORANDUM.

General Hertzog's Native Legislation.

(Confidential.)

General Hertzog's native policy was originally embodied in four Bills which were laid before the Union Parliament as long ago as 1926. None of these Bills has become law and they have been altered in detail from time to time. Their general character is as follows:—

Natives Parliamentary Representation Bill.—The object of this Bill is to abolish the Cape native franchise, under which all male non-white adults are entitled to be registered as voters provided that they (i) can sign their name and write their address and occupation, and (ii) are in receipt of wages of not less than £50 per annum or occupy premises of the value of not less than £75. In other words they possess the franchise on the same terms as white persons before the passing of Act No. 18 of 1930, enfranchising adult white women, and Act No. 41 of 1931, extending the franchise to all adult white males.

In its original form the Bill provided for the immediate abolition of the Cape native franchise and for the creation of a separate native roll which would be entitled to elect a few European representatives of native interests in the

House of Assembly. The first proposal has been modified so as to allow Cape natives who are already on the voters register to retain their existing franchise rights if they wish to do so. No new native names are, however, to be added to the ordinary Parliamentary Voters register, so that the native franchise would be extinguished after the lifetime of the present native voters. The second proposal has been replaced by one under which four additional members of the Senate, who are of course to be Europeans, are to be elected by electoral colleges consisting of chiefs, native members of local councils, and native members of native advisory boards. In addition the Bill provides for the creation of a Native Representative Council, with advisory functions relating to matters affecting natives, consisting of six European official members, four nominated native members, and twelve natives elected by the aforesaid electoral colleges; and for the inclusion of two native members, elected by the same electoral colleges, in the Cape Provincial Council.

The motive of the Bill was stated by General Hertzog in his speech moving the second reading in 1929 as follows: "Every thinking European in South Africa feels to-day that if the Cape system continues as it is within the next 50 years . . . . . the natives will form the majority of the voters in the Cape Province, and the representatives of the Cape Province will hold their mandate from the natives. If that happens and in the proportion in which it happens, the pressure of the northern provinces for the extension to the north of the franchise in force in the Cape increases." In this connexion it may be mentioned that in 1929 the native vote amounted to nearly 16,000 out of a total electorate of 452,000. In 1933 it had fallen to under 11,000 and the total electorate, as a consequence of the grant of adult suffrage to Europeans, had increased to 922,000.

When the Union was created the Cape native franchise was safeguarded by section 35 of the South Africa Act, which provides that any law to disqualify by reason of his race and colour any person who, under the laws existing in the Cape at the establishment of the Union, is entitled to be registered as a voter, shall require a two-thirds majority of the total number of members of both Houses. When the Bill was introduced in 1929 it was opposed by the South African Party and failed to secure the necessary two-thirds majority.

Coloured Persons Rights Bill.—When this Bill was introduced in 1929, it provided for the creation of a coloured constituency for the provinces other than the Cape, returning one member to the House of Assembly. For this purpose a separate coloured persons roll was to be prepared and a Board was to be set up to decide who was or was not a coloured person according to the elaborate definition contained in the Act. In its 1929 form the Bill provided that after 10 years it was to be open to Parliament, by resolution of both Houses, to merge the coloured persons electoral roll in the ordinary electoral roll, but in a 1930 draft this provision was omitted.

The Bill purported to leave intact the existing franchise rights of coloured persons in the Cape (where they possess the same franchise rights as natives) and also, so far as they exist, in Natal (where they are not disqualified *nominatim* but are in practice excluded from the franchise). Actually it subjected them to a special, elaborate, and vexatious procedure of registration which was obviously designed to discourage them from applying to be registered.

This Bill was withdrawn as a consequence of the failure of the Natives Representation Bill (on the passing of which certain clauses in it were dependent) to obtain the necessary two-thirds majority, and it is understood that it is not proposed to proceed with it at present.

Union Native Council Bill.—This Bill provided for the establishment of a carefully controlled native sub-parliament of a largely deliberative character. In the joint sitting in 1929 on the two Bills already described, General Hertzog announced that this Bill would be held over until such time as the natives in the Union showed that they were able to avail themselves of the privileges conferred on them by General Smuts's Act of 1920 providing for the establishment of native councils.

Natives Land (Amendment) Bill.—The Natives Land Act, 1913, forbade the acquisition of land by natives outside the existing reserves but as some compensation an undertaking was given that additional native areas would in due course be marked out. General Hertzog's Bill purported to give effect to this promise. But instead of new reserves for the exclusive use of natives, it merely provided "released areas" in which natives and Europeans would be free to compete with one another for land. The Bill also made provision for bringing the Cape Province, to which it had been decided by the Courts that the above restriction

did not apply, into line with the other provinces. No attempt has so far been made to carry this Bill into law, and nothing is known as to the present position with regard to this part of General Hertzog's native policy, though General Smuts in his speech at the South Africa Dinner Club over here last November said that a Parliamentary Committee had been working for some years on a measure for increasing the areas of native reserves and that it was hoped that it would soon be possible to make a substantial addition to them.

In 1931 these Bills (except the Native Council Bill) were referred to a Joint Select Committee of both Houses. The Committee was unable to reach agreement, and when the present Union Government was formed at the beginning of 1933, the question was referred to in the following terms in the joint statement of principles on which Generals Hertzog and Smuts had agreed to co-operate in forming a Government.

> "(6). An earnest attempt will be made to arrive at a satisfactory solution of the native question along lines which, without depriving the native of his right of development, sets in the foreground the requirements of white civilisation and provides for separate political representation of white and black. To this end the discussions of the Joint Select Committee on the Representation of Natives, etc., shall be expedited so that the necessary legislation may be brought before Parliament as soon as possible."

This clause expressed the views of General Hertzog, and the following explanatory note which was added to the statement reflected those of General Smuts:

> "(*d*). With reference to clause 6, it is not thereby implied that agreement has been attained in regard to the principle of separate political representation, or that the contemplated legislation will necessarily be introduced during the life of the next Parliament. That Parliament will be elected primarily for the purpose of dealing with the urgent economic problems of to-day, and in any case it is desirable that every effort should be made to secure that such legislation should, if possible, be based on general agreement."

When the fusion of the Nationalist and South African Parties was decided upon, the question was referred to as follows in the statement of the terms of fusion which was issued by Generals Hertzog and Smuts in June, 1934:

> "An earnest endeavour will be made to arrive at a satisfactory solution of the native question along lines which, without depriving the native of his right of development, will recognize as paramount the essentials of European civilization.
>
> (*b*) It is recognized that a solution of the political aspect of this question, on the basis of separate representation of Europeans and natives, or otherwise, being fundamental in character, and not having hitherto been a matter of party division should, as far as possible, be sought through agreement and should be left to the free exercise of the discretion of the individual members representing the Party in Parliament.
>
> (*c*) The recognition of the natives as a permanent portion of the population of South Africa under the Christian trusteeship of the European race is accepted as a fundamental principle of native policy, together with the definite avoidance of race intermixture, and the promotion of a spirit of good will and mutual confidence between the two races as being in the best interests of South Africa."

The present position is that the Joint Select Committee, which was re-appointed in 1934 and again in 1935, has apparently at last reported in favour of a solution on the lines indicated above. According to information which has reached the High Commissioner, Generals Hertzog and Smuts have jointly sponsored this solution before the Joint Select Committee, but General Smuts, who is deeply committed to the maintenance of the Cape franchise, has informed the Committee that he will vote against that part of the proposals which provides for the gradual extinction of the Cape franchise. Under the terms of fusion (see above) he would be entitled to take this line. General Smuts himself informed the High Commissioner on the 28th March last of the general lines of the native representation proposals. He said that there had been difficulties in the last few days but that he hoped they would be smoothed over and that it would be possible to get the Bills produced, though of course they would not be proceeded with during the current session. On the 13th April the High Commissioner reported that General Hertzog had left for England without tabling the report of the Joint Select Committee or publishing the native Bills. The High Commissioner added that the decision to defer publication might have been influenced by the fact that the question was figuring prominently in a by-election at East London in the Cape, where the Dominion Party were attempting to secure the native vote by predicting that the native franchise was to be abolished by the native Bills and were hotly attacking the Government on that ground. The result of the by-election was a win for the Dominion Party candidate with 3,135 votes, against 2,586 for the United (Government) Party candidate, and 411 for the Labour candidate. It is stated that the Dominion Party undoubtedly captured the entire native vote, numbering about 400, on the strength of the above representations.

Dominions Office,
April, 1935.

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PART II

CORRESPONDENCE

1934—36

relating to

SOUTHERN RHODESIA

PART II

Correspondence

1934—36

relating to

SOUTHERN RHODESIA

AMALGAMATION OF NORTHERN AND SOUTHERN RHODESIA

Resolution of Legislative Assembly and suggested Conference

11969/132.

No. 186.

DESPATCH

from

SOUTHERN RHODESIA GOVERNMENT.

(Received 26th May, 1936.)

[Answered by No. 187.]

(No. 218.)

SIR,

Salisbury, 15th May, 1936.

With reference to my despatch No. 209 of the 13th May*, and previous correspondence, I have the honour to enclose a copy of a Minute from my Ministers requesting me to transmit to you the recent Resolution of the Legislative Assembly expressing the opinion that the early amalgamation of the two Rhodesias under a Constitution conferring the right of complete self-government is in the best interests of all the inhabitants of both Territories.

2. You will observe that Ministers have attached a copy of the Minutes of the proceedings of the Conference of unofficial Members of the Legislatures of the two countries which was held at the Victoria Falls on the 23rd and 24th January, 1936.

I have, &c.,

H. J. STANLEY,

Governor.

Enclosure in No. 186.

Minute.

(No. 222/36.)

Prime Minister's Office, Salisbury, Southern Rhodesia,

12th May, 1936.

MINISTERS have the honour to request that His Excellency the Governor may be pleased to transmit to the Secretary of State for Dominion Affairs, the subjoined Resolution which was passed by the Legislative Assembly of the Colony of Southern Rhodesia on the seventh day of May, 1936:—

"THAT THIS HOUSE IS OF THE OPINION THAT THE EARLY AMALGAMATION OF NORTHERN RHODESIA AND SOUTHERN RHODESIA, UNDER A CONSTITUTION CONFERRING THE RIGHT OF COMPLETE SELF-GOVERNMENT, IS IN THE BEST INTERESTS OF ALL THE INHABITANTS OF BOTH COLONIES."

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* 11969/131: not printed.

MINISTERS have the honour to inform His Excellency that this Resolution was passed with four dissentients.

MINISTERS also have the honour to submit for His Excellency's information, and for the information of the Secretary of State, a copy of the Minutes of the Proceedings of the Conference of Representatives of Southern and Northern Rhodesia held at the Victoria Falls on the 24th January, 1936.

(Signed) G. MARTIN HUGGINS.

AMALGAMATION OF NORTHERN AND SOUTHERN RHODESIA.

CONVENTION HELD AT THE VICTORIA FALLS HOTEL ON THE 23RD AND 24TH JANUARY, 1936.

Present:

Southern Rhodesian Delegation.	*Advisers.*
JAS. COWPER, M.P. (Bulawayo Central). *In the Chair.* R. C. TREDGOLD, M.P. (Insiza). LT.-COL. J. B. BRADY, D.S.O., M.P. (Bulawayo North). D. M. SOMERVILLE, M.P. (Umtali North). MAJOR L. M. HASTINGS, M.C., M.P. (Lomagundi). E. W. L. NOAKS, M.P. (Mazoe). R. T. ANDERSON, M.P. (Salisbury Central).	CAPTAIN H. BERTIN, K.C. CAPTAIN H. H. PHILLIPS. O. KAUFMANN, E. C. F. WHITEHEAD, S. H. VEATS, (United Party).
H. H. DAVIES, M.P. (Bulawayo South). D. MCINTYRE, M.P. (Bulawayo Central). L. W. J. KELLER, M.P. (Raylton). MAJOR G. H. WALKER, D.S.O., M.P. (Salisbury South).	T. A. KIMBLE, A. J. DAVIES, (Labour Party).
SIR HUGH WILLIAMS, BART., M.C., M.P. (Gwanda). CAPT. R. E. DOWNES, M.P. (Hartley).	REGINALD HEATH. W. LANE MITCHELL. (Reform Party).

Northern Rhodesian Delegation.

THE HON. L. F. MOORE, M.L.C. (Livingstone and Western Area).
THE HON. MRS. C. OLDS, M.L.C. (Nkana).
LT.-COL. THE HON. S. GORE-BROWNE, D.S.O., M.L.C. (Northern Area).
THE HON. C. S. KNIGHT, M.L.C. (Southern Area).
THE HON. J. L. BRUCE, M.L.C. (Eastern Area).
CAPT. THE HON. JOHN BROWN, M.B.E., M.L.C. (Midlands Area).
LT.-COL. THE HON. A. STEPHENSON, C.M.G., D.S.O., M.C., M.L.C. (Ndola).

Resolved That

1. This Convention is of the opinion that the early Amalgamation of Northern and Southern Rhodesia under a Constitution conferring the right of complete self-government is in the interests of all the inhabitants of both Colonies.

2. This Convention considers the following to be suitable terms on which Amalgamation could take place:—

(*a*) The Establishment of One Government embracing Northern and Southern Rhodesia and consisting of:
  (1) A Governor.
  (2) A Legislative Assembly.
  (3) A Legislative Council.
  (4) A Public Service.
  (5) A High Court.

(*b*) The Headquarters of the Government of Rhodesia to be at Salisbury.

(*c*) The existing Electoral Acts of the two Colonies to apply respectively until changed by legislative enactment by the Government of Rhodesia, provided that the number of Members in the Legislative Assembly to be not less than seven for Northern Rhodesia and not less than thirty for Southern Rhodesia.

(*d*) The respective public debts of both Colonies to be a debt charge on the Colony of Rhodesia.

(*e*) The Legislative Council to be partly nominated and partly elected, save that the only nominated Members shall be not more than three persons nominated thereto in the interests of the Native inhabitants.

(*f*) The Law to be administered in Northern Rhodesia and in Southern Rhodesia to be the same as is now respectively administered until changed by legislative enactment by the Government of Rhodesia.

3. The Government of Southern Rhodesia be requested to settle the details consequent on the foregoing Resolutions.

4. The Government of Southern Rhodesia ask the Imperial Government to receive a deputation from the Government of Southern Rhodesia and the Elected Members of Northern Rhodesia to discuss the principle of Amalgamation and the draft of a Constitution for the proposed Colony of Rhodesia.

5. The draft Constitution be submitted to the electorates of Northern and Southern Rhodesia respectively by means of a Referendum.

6. This and the foregoing Resolutions be forwarded to the Governments of Northern and Southern Rhodesia respectively for transmission to the Secretaries of State concerned.

7. The following be and are hereby appointed the Amalgamation Convention Committee.

Mr. Jas. Cowden, M.P.,
The Hon. L. F. Moore, M.L.C.,
Mr. H. H. Davies, M.P.,
Sir Hugh Williams, Bart., M.C., M.P.,
Lt.-Col. J. B. Brady, D.S.O., M.P.,
Captain H. Bertin, K.C.

Mr. Jas. Cowden, M.P., to act as Chairman and Lt.-Col. J. B. Brady, D.S.O., M.P., as Secretary.

(Sgd.) J. C.
J. B. B.

11969/137.

No. 187.

DESPATCH

to

SOUTHERN RHODESIA GOVERNMENT.

[Answered by No. 188.]

(No. 336.)

SIR,

Downing Street, S.W.1, 12th October, 1936.

I have the honour to acknowledge the receipt of your despatch No. 218 of the 15th May*, enclosing a copy of a Minute from your Ministers requesting you to transmit to me the recent Resolution from the Legislative Assembly of Southern Rhodesia expressing the opinion that the early amalgamation of Southern and Northern Rhodesia under a Constitution conferring the right of complete self-government is in the best interests of all the inhabitants of both Territories; and also enclosing for my information a copy of the Minutes of the Proceedings of the Conference of representatives of Southern and Northern Rhodesia held at the Victoria Falls on the 24th January last.

2. The suggestion has also been made that His Majesty's Government in the United Kingdom should convene a Conference to discuss the whole question of amalgamation. I have considered this suggestion but, after consultation with the Secretary of State for the Colonies, I do not feel that any useful purpose would be served by such a Conference at the present time. The decision with regard to amalgamation which His Majesty's Government in the United Kingdom announced in 1931 was only taken after the most thorough examination of the whole problem and also after consultation with Members of the Parliamentary Parties then in opposition. Although it was made clear in that announcement that His Majesty's Government did not wish to reject the idea of amalgamation in principle, should circumstances justify it at a later

* No. 186.

date, the announcement was definitely intended as settling the question for some time to come, and His Majesty's Government in the United Kingdom do not feel that during the period of five years which has elapsed there has been such a material change in conditions as would justify reconsideration of the decision reached after so much thought in 1931.

3. There is the additional point that, although there may be a body of opinion among the European agricultural settlers in Northern Rhodesia in favour of amalgamation, the unanimity which was reached at the Victoria Falls Conference was obtained only on the basis of a Constitution conferring the right of " complete self-government," and I gather that there are some members of the Southern Rhodesia Legislature who would definitely reject the idea of amalgamation on any basis short of this. I think, however, that your Prime Minister will have realized from his discussions with my predecessor in London in 1934 and 1935 that His Majesty's Government in the United Kingdom could not regard it as practical politics to discuss such a suggestion at present even in relation to Southern Rhodesia, and since the resolution in the Southern Rhodesia Legislature was passed, the position in this respect will have been made clear in Southern Rhodesia by the recent publication of your despatch relating to the proposed amendment of the Southern Rhodesia Constitution.

4. In the circumstances I fear that, apart from the more general objection which I have mentioned, any expression of willingness on the part of His Majesty's Government in the United Kingdom to entertain the idea of a Conference could only give rise to a misleading impression. But I am looking forward to seeing your Prime Minister personally next year on the occasion of the Coronation, and if he should desire it, I shall be glad to take the opportunity to discuss this matter with him.

I have, &c.,

MALCOLM MACDONALD.

11969/139.

No. 188.

TELEGRAM

from

SOUTHERN RHODESIA GOVERNMENT.

(Received 9.57 a.m., 15th October, 1936.)

No. 91. 15th October. Your despatch of the 12th October, No. 336*. My Ministers ask me to inform you that in their opinion situation has undergone change in several important respects since 1931 and that my Prime Minister will be glad to avail himself of opportunity which you have been so good as to offer him to discuss the whole matter further with you when he visits England next year.

CONSTITUTION OF SOUTHERN RHODESIA

(1) Functions of the High Commissioner for Basutoland, the Bechuanaland Protectorate, and Swaziland in connection with Native Administration

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21147/6.

No. 189.

SIR CECIL HUNTER-RODWELL (GOVERNOR OF SOUTHERN RHODESIA)

to

SIR EDWARD HARDING (DOMINIONS OFFICE).

(Received 26th June, 1934.)

(Confidential.)

Government House, Salisbury,
8th June, 1934.

MY DEAR HARDING,

With reference to my telegram of to-day†, informing you of the date of my Prime Minister's arrival in England and enumerating certain matters which he would like

* No. 167.

† No. 20315/17: not printed.

to discuss, I enclose a copy of a note furnished by him on the constitutional points which he proposes to raise. The note is dated 2nd June but was only handed to me to-day.

Although Huggins has referred to most of these points from time to time in conversation with me, this is the first time that I have seen his suggestions in writing and I shall not have time to study them before the air mail leaves. I propose, however, to examine them between now and the date of my own arrival in London, when I shall be prepared to give my views, should these be desired.

Yours, &c.,
C. H. RODWELL.

Enclosure in No. 189.

MATTERS CONCERNING THE CONSTITUTION OF SOUTHERN RHODESIA TO BE DISCUSSED WITH THE SECRETARY OF STATE.

Section 28 of Letters Patent.—It has been suggested that this section be amended in respect of sub-section (*a*), and that legislation of major importance under this section should be reserved until an Upper Chamber, with nominees appointed expressly to represent persons of non-European descent, has been constituted in the Colony. From this it is not intended to be inferred that the existing Legislature is incapable of holding the balance fairly between the races.

It would be preferred by the Government Party that pending the constitution of such an Upper Chamber, the reservation of such legislation should be effected by removing the reservation in the Constitution and incorporating it in the Instructions to His Excellency the Governor. It is desired that the Instructions should be that His Excellency the Governor should reserve only legislation on Native Affairs of major importance.

The Labour Party wish the existing reservation to be removed altogether.

The Rhodesian Party are agreeable to the Government Party's suggestions, but would be perfectly satisfied if no alteration were made.

Section 39 of Letters Patent.—It is recommended that in sub-sections (1), (2), and (3) of this section, the words " High Commissioner " should be deleted, and that the position could be well met by applying the same conditions to the Native Department as apply to magistrates. It is further suggested that the officials of the Native Department should be brought under the operations of the Public Services Act, and that matters affecting the staff of that Department should be referred for the recommendations of the Public Services' Board. The Public Services Act had not been passed, nor had the Public Services' Board been constituted at the time of granting the Letters Patent.

Section 40 of Letters Patent.—It is again recommended that the High Commissioner should not function in regard to all the matters dealt with in this section; but that they should be brought within the provisions of the Public Services Act.

Section 41 of Letters Patent.—It is suggested that the words " without the previous consent of the High Commissioner " should be deleted, and that the words " without the previous consent of the Governor-in-Council " be substituted.

Section 42 of Letters Patent.—It is recommended that in sub-sections (1) and (2), the powers be transferred to His Excellency the Governor, and that a definite Trust be created for the Native Reserves.

Section 45 of Letters Patent.—It is desired that the words " High Commissioner " be deleted in both places where they occur in this section, and that the words " Secretary of State " be substituted.

Section 46 of Letters Patent.—It is felt that this section is now covered by the Native Affairs Act and by the Common Law.

Section 47 of Letters Patent.—It is suggested that the powers conferred on the High Commissioner by sub-sections (1) and (2) be transferred to the Governor-in-Council.

Section VII of Instructions to the Governor.—It is recommended that the instructions contained in sub-sections 1, 2, 3, 4, 5, and 6 be removed; but it is considered that sub-section 7 should be retained.

2nd June, 1934.

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* No. 20315/17: not printed.

(2) Reservation of Bills relating to Natives

21147/9. No. 190.

SIR EDWARD HARDING (DOMINIONS OFFICE)
to
MR. G. M. HUGGINS (PRIME MINISTER, SOUTHERN RHODESIA).

[Answered by No. 191.]

DEAR MR. HUGGINS, Downing Street, S.W.1, 30th July, 1934.

I have informed Mr. Thomas of the discussions which we have had with you in regard to the Constitution of Southern Rhodesia, and I am now writing to you, with his approval, to record the conclusions which have been reached.

2. There are three main points which we discussed, viz.,

(i) the provision in section 28 (*a*) of the Constitution Letters Patent relating to the reservation of Bills whereby natives may be subjected or made liable to conditions, disabilities, or restrictions to which persons of European descent are not also subjected or made liable;

(ii) the functions in connexion with Native Administration assigned to the High Commissioner for South Africa under the Constitution Letters Patent;

(iii) the terms of section VII of the Royal Instructions to the Governor.

3. As regards (i), the Secretary of State feels that it is desirable that this provision should be retained in the Letters Patent. The existing provisions in the Southern Rhodesia Constitution relating to native matters were based on the recommendations in the report of Lord Buxton's Committee of 1921 (Cmd. 1273), where it was pointed out that the late Sir Charles Coghlan, speaking with the approval of the other Elected Members of the Legislative Council, had made it clear that they would accept " all the guarantees which the Imperial Government might choose to lay down " in regard to the native population. The Committee advised that the procedure then in existence, which worked well and without friction, should be altered and disturbed as little as possible and that, with certain necessary alterations and omissions, that part of the Southern Rhodesia Order in Council of 1898 which dealt with Native Administration should be taken as the basis for the reservations which appeared advisable in the interests of the natives. Section 28 (*a*) of the Letters Patent, and the complementary section 41, have therefore as their origin Article 80 of the Southern Rhodesia Order in Council of 1898 which provided that—

> " No conditions, disabilities, or restrictions shall, without the previous consent of a Secretary of State, be imposed upon natives by Ordinance which do not equally apply to persons of European descent, save in respect of the supply of arms, ammunition and liquor ".

4. Mr. Thomas appreciates that, in view of the record of Southern Rhodesia in the matter of native administration since the establishment of responsible Government in 1923, the necessity for all the detailed safeguards which were then thought desirable no longer exists but he feels that the time has not come when it would be possible for His Majesty's Government in the United Kingdom to agree to variation of the principle involved.

5. There is the further consideration that the development of native policy in Southern Rhodesia may well have repercussions outside the territory of the Colony, even though the problems which are likely to arise in Southern Rhodesia may be in many respects dissimilar from those which are likely to arise elsewhere. For this reason also Mr. Thomas feels that it is desirable that there should be provided in the Constitution the opportunity for discussion on these matters between the Government of Southern Rhodesia and His Majesty's Government in the United Kingdom which is afforded under section 28.

6. The observations set out in paragraph 3 above apply equally as regards the functions assigned to the High Commissioner for South Africa under the Constitution, which are for the most part based on the Order in Council of 1898. Lord Buxton's Committee advised that the High Commissioner should remain as an integral portion of the Constitution, standing towards the Government of Southern Rhodesia in much the same position as he formerly occupied towards the British South Africa Company's Administration. Mr. Thomas feels that the arrangement has proved of value and

should be retained, but, after consultation with Sir H. Stanley, he agrees that there are certain sections of the Letters Patent relating to the High Commissioner's powers which can now be modified, viz., sections 39, 40, 45, 46 and 47. As regards sections 39 and 40, relating to the appointment, duties, suspension and removal of the officers of the Native Department, you have pointed out that such matters are now regulated by the terms of the Public Services Act, which had not been passed at the time of the grant of responsible Government and Mr. Thomas agrees that the supervisory functions of the High Commissioner under these sections need not in the circumstances be maintained. It is agreed also that no useful purpose would be served by the retention of sections 45 and 46; and that the references to the High Commissioner in section 47 can be eliminated. Mr. Thomas understands, however, that you are prepared to agree on behalf of the Southern Rhodesia Government that the High Commissioner should be kept in touch with any proposals for the establishment of Native Councils.

7. It is understood that you may wish later to propose some modification of the procedure under section 42 of the Letters Patent. Mr. Thomas attaches importance to the principle involved in this section, under which the High Commissioner acts as trustee for native interests in respect of the reserves, but he would be prepared to consider carefully any proposals for a simplification of the machinery which would not interfere with the principle involved.

8. As regards the third point mentioned above, I am to say that Mr. Thomas is prepared to advise His Majesty that section VII of the Royal Instructions to the Governor should be amended by the deletion of heads 1 and 4, relating to laws for divorce and laws imposing differential duties.

As regards the other heads in this section it will be realized that the main object in view is to provide an opportunity for consultation with His Majesty's Government in the United Kingdom before legislation on certain matters which might affect other than purely local interests should come into operation.

Questions relating to treaty rights are, of course, of special concern to His Majesty's Government in the United Kingdom, who are responsible for the relations of Southern Rhodesia with foreign countries; while legislation relating to currency might, in certain circumstances, have serious reactions in neighbouring British territories.

As regards head 6 of this section you can, I think, be sure that His Majesty's Government in the United Kingdom would not desire or seek to intervene unless interests outside Southern Rhodesia of grave importance were in question.

Yours, &c.,

E. J. HARDING.

21147/9. No. 191.

MR. G. M. HUGGINS (PRIME MINISTER, SOUTHERN RHODESIA)

to

SIR EDWARD HARDING (DOMINIONS OFFICE).

[*Answered by No. 192.*]

Crown House, Aldwych, London, W.C.2,

DEAR SIR EDWARD HARDING, 1st August, 1934.

Thank you for your letter of the 30th July*, with which was enclosed a letter informing me that you had discussed the constitutional matters with Mr. Thomas.

Since our conversations I have seen Lord Buxton, who, as you know, was on the Committee held to draft our original Constitution.

Lord Buxton, with whom I discussed the matter, told me that the inclusion of the High Commissioner in our Constitution was only regarded as a temporary measure, and, in view of this, I am returning to the suggestion that we have arrived at the stage when the High Commissioner is really superfluous, and his intervention definitely lowers the constitutional status of the Colony; and so I am making a further suggestion to you, and that is that in lieu of my original suggestion made during our conversations, that the High Commissioner should be removed in so far as Southern Rhodesia is concerned, that in future we deal with all Reserve matters with the Secretary of State

* No. 190.

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direct, but that a general clause be inserted in lieu of the High Commissioner's reservations, which will read something to this effect:—

> ," that the Governor, at the request of the Secretary of State, shall at any time refer any question relating to Native affairs to the High Commissioner for his advice."

This will mean, in effect, that all Reserve matters will be forwarded to the Dominions Office, and when the Secretary of State requires further assistance he instructs the Governor to ask the advice of the High Commissioner. This, I consider, would improve the constitutional position considerably, without, in effect, removing any of the safeguards which at present exist.

The High Commissioner would be available to advise the Secretary of State as and when required, instead of the Government of Southern Rhodesia as at present being compelled to go through an additional official appointed by the Secretary of State.

Yours, &c.,

G. MARK. HUGGINS.

21147/9. No. 192.

SIR EDWARD HARDING (DOMINIONS OFFICE)

to

MR. G. M. HUGGINS (PRIME MINISTER, SOUTHERN RHODESIA).

DEAR MR. HUGGINS, Downing Street, S.W.1, 2nd August, 1934.

Thank you for your letter of 1st August* as to the Southern Rhodesia Constitution. I will show it to the Secretary of State as soon as I can.

I gathered, however, from you at our talk this afternoon that you would not expect a considered answer before you leave England on 8th August, and, in any case, Mr. Thomas will, no doubt, wish to consult the High Commissioner.

In the meantime I am not clear how far the suggestion in your letter is intended to affect the position of the High Commissioner, under section 42 of the Letters Patent, as Trustee for the Native Reserves.

You will remember also that the High Commissioner is entrusted with certain powers under the Land Apportionment Act. The position in this respect was discussed at the conference at the Dominions Office on 6th July.

I understood from you this afternoon that you would further consider both these matters and let me hear in due course.

Yours, &c.,

E. J. HARDING.

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(3) Royal Instructions to the Governor

21147/11. No. 193.

SIR EDWARD HARDING (DOMINIONS OFFICE)

to

MR. G. M. HUGGINS (PRIME MINISTER, SOUTHERN RHODESIA).

DEAR MR. HUGGINS, Downing Street, S.W.1, 8th October, 1934.

I promised to let you have a further letter in amplification of what was said in the last paragraph of my letter of the 30th July† regarding the reference to currency legislation in section VII of the Royal Instructions to the Governor.

I explained in that letter that the main object in view under this section of the Royal Instructions is to provide an opportunity for consultation with His Majesty's Government in the United Kingdom before legislation on certain matters which might

* No. 191. † No. 190.

affect other than purely local interests should come into operation and that in the case of currency legislation this might in certain circumstances have reactions in neighbouring British Territories. This, of course, does not imply any suggestion that Southern Rhodesia should not have the right, and are not fully competent, to legislate in currency matters so far as their internal needs are concerned. You will, however, recognize how intimate are the relations between the currency of Southern Rhodesia and those of neighbouring Empire Territories, and His Majesty's Government in the United Kingdom are naturally concerned to see that, wherever necessary, the needs and points of view of other Territories, for which they are responsible, are adjusted in an impartial manner. The consultations which have been necessary in the special circumstances of the last three years have shown that their real basis is rather a mutual good-will than any explicit constitutional provisions. Nevertheless, it is felt that it would be both desirable and for the general advantage that the present arrangement, by which His Majesty's Government in the United Kingdom are in a position to bring such non-domestic considerations to the notice of the Southern Rhodesia Government, should be retained, and it is hoped that you will agree that the existing provision in the Royal Instructions need not be disturbed.

Yours, &c.,

E. J. HARDING.

21147/20.

No. 194.

SIR EDWARD HARDING (DOMINIONS OFFICE)

to

MR. G. M. HUGGINS (PRIME MINISTER, SOUTHERN RHODESIA).

DEAR PRIME MINISTER, Downing Street, S.W.1, 22nd July, 1935.

In my letter of the 30th July, 1934*, a copy of which is enclosed for convenience of reference, I conveyed to you the conclusions reached by the Secretary of State upon the matters raised in the discussions which took place with you in London last year in regard to the Constitution of Southern Rhodesia.

2. These discussions related mainly to the functions assigned to the High Commissioner for South Africa (as his previous title was) under the Constitution and it will be recalled that it was agreed that there were certain sections of the Constitution Letters Patent relating to the High Commissioner's powers which might be modified or eliminated—see the sixth paragraph of my letter of the 30th July. Mr. Thomas also let you know that he was prepared to advise His Majesty that section VII of the Royal Instructions should be amended in the sense indicated in the first sub-paragraph of paragraph 8 of that letter.

3. Immediately prior to your return to Southern Rhodesia, however, you indicated that in your view a stage in the development of Southern Rhodesia had been reached in which the powers given under the Constitution to the High Commissioner were really superfluous and, in consequence, you put forward, as an alternative to the amendments set out in my letter of the 30th July, a suggestion that, in lieu of all present provisions in the Constitution relating to the powers of the High Commissioner, there should be a general clause to the effect that " the Governor, at the request of the Secretary of State, shall at any time refer any question relating to native affairs to the High Commissioner for his advice ". You explained that this would mean, in effect, that the Southern Rhodesia Government would deal, in all reserved matters, with the Secretary of State direct, and that when the Secretary of State required further assistance he would instruct the Governor to seek the advice of the High Commissioner.

4. Prior to your present visit to this country, the proposals which, arising out of this suggestion, you wished to discuss relating to the amendments to the Constitution Letters Patent, the Southern Rhodesia Order in Council of 1920 and certain Acts under the provisions of which powers are exercised by the High Commissioner were communicated to the Secretary of State both in their main lines and in detail. Briefly, the two main principles of the proposals were the following:—

(*a*) The elimination of the High Commissioner's powers from the Constitution Letters Patent, and from all Southern Rhodesia legislation which confers powers upon him, and the conferring of similar powers, where this is regarded as necessary, on the Secretary of State; this change to be coupled

* No. 190.

with a new provision in the Royal Instructions to the Governor, requiring him, if so requested by the Secretary of State at any time, to furnish the High Commissioner with any information or to refer to him for his advice any question with regard to native affairs.

(*b*) The vesting of the Native Reserves (which are at present, under section 42 of the Letters Patent and the Southern Rhodesia Order in Council of 1920, vested in the High Commissioner), in a Board of Trustees, viz., a Chairman, appointed by the Secretary of State, a Judge of the High Court, and the Chief Native Commissioner. This Board would perform the functions in regard to the reserves now exercised by the High Commissioner, except that the Secretary of State would be substituted for the High Commissioner as the authority for the approval of regulations relating to the occupation of reserves by persons other than natives.

5. Stated very briefly, the arguments advanced in support of these proposals were: (*1*) that the administrative intervention of a third party between the Government of the Colony and the Secretary of State was felt to be an anomaly which had now outlived its original efficacy; (*2*) that as the High Commissioner has had, since the grant of responsible Government, no direct representative, such as the former Resident Commissioner, in the Colony, his touch with Southern Rhodesian affairs has necessarily grown less close and special local knowledge has ceased to be very directly at his disposal; (*3*) with the advance of air-mail services, reference from Salisbury to the Secretary of State in London has been much expedited and the difference in the time involved in such communications from that involved in communications from Salisbury to Cape Town is no longer a factor of serious importance.

6. In these circumstances it was represented that there was not sufficient practical justification for the retention of an arrangement which tended to be regarded in Southern Rhodesia as inappropriate to the Colony's present stage of constitutional development.

7. These two main proposals and the consequential detailed alterations which they would involve, have formed the main subject of our recent discussions.

8. I am now writing with the Secretary of State's approval, to put on record the main lines of these discussions and the conclusions which Mr. Thomas has reached upon them.

9. The changes proposed are more extensive than those discussed last year and differ somewhat in character. Mr. Thomas appreciates, however, the considerations advanced in support of the proposals: moreover, while the effect would be the disappearance of the High Commissioner from the Letters Patent etc., yet it is contemplated that the more important of the functions now exercised by the High Commissioner under the Constitution should either be transferred to the Secretary of State or performed by a body on which the Secretary of State would be represented.

10. There would not, therefore, be any radical departure from the main principle upon which those provisions of the Southern Rhodesia Constitution relating to native matters were framed, and, in these circumstances, and subject to what is said in the succeeding paragraph, Mr. Thomas is disposed to agree to the amendment of the Constitution Letters Patent, and of the Southern Rhodesia legislation under which certain functions are exercised by the High Commissioner, in the manner indicated in the annexed note.

11. As regards the provision relating to the High Commissioner which, it was suggested, should be inserted in the Royal Instructions (paragraph 4 (*a*) above), it must be borne in mind that at present the High Commissioner, in addition to having powers delegated to him under the Constitution, acts as adviser to the Secretary of State on legislation affecting natives which falls within the terms of section 28 (*a*) of the Constitution Letters Patent. Mr. Thomas attaches considerable importance to the High Commissioner being enabled to continue to advise on such matters if so desired by the Secretary of State, and for this reason, he feels it essential that the High Commissioner should be kept fully informed as to native affairs in the Colony. Moreover, having regard to the fact that the changes contemplated would transfer to the Secretary of State certain of the functions in regard to native affairs at present exercised by the High Commissioner, it appears to be additionally desirable that the latter, who is familiar with and responsible for the administration of other native territories, should continue to be able to advise the Secretary of State in the light of adequate knowledge of native affairs in Southern Rhodesia; indeed, were the situation otherwise, the Secretary of State would feel considerable hesitation in accepting the changes proposed.

12. The suggestion made in the second part of (*a*) in paragraph 4 above would not appear wholly to meet the position, since the effect would apparently be that the High Commissioner would advise the Governor and not the Secretary of State and that advice

to the Governor would only be tendered in specific instances at the request of the Secretary of State. Mr. Thomas is therefore of opinion that the addition to be made to the Royal Instructions should be in somewhat wider terms than that mentioned and should be to the effect that the Governor should keep the High Commissioner informed regarding native affairs in Southern Rhodesia.

13. As regards the proposal referred to in paragraph 4 (*b*) above, relating to a change in the authority in whom the Native Reserves are vested, after careful consideration the Secretary of State agrees that the idea of vesting the Native Reserves in a Board of Trustees composed of a nominee of the Secretary of State as Chairman, a Judge of the High Court and the Chief Native Commissioner is one which could be adopted without impairment of the principle underlying section 42 of the Letters Patent. He would therefore be prepared to agree to a modification of section 42 of the Letters Patent and of the Southern Rhodesia Order in Council of 1920 on these lines. The necessary modifications which we discussed are included in the annexed note.

14. It is probable that the Secretary of State would wish that his first nominee to the Chairmanship of the Board should be the present Governor and I understood from you that this proposal, if made, would be acceptable to the Government of Southern Rhodesia.

15. I should add that, in the annexed note on the amendments of the relevant Instruments and legislation which would be consequential on the changes proposed in the Constitution, there have been included for convenience notes of the conclusions reached in our discussions on certain questions of procedure and other related matters.

Yours, &c.,

E. J. HARDING

Enclosure 2 in No. 194.

NOTE OF AMENDMENTS, ETC.

A.—*Southern Rhodesia Constitution Letters Patent.*

Sections 39 and 40 (Native Department).—It was agreed last year that the supervisory functions of the High Commissioner under these sections need not be maintained. It is now further proposed that there should be inserted in section 39 provision to the effect that the Chief Native Commissioner may not be removed from his post without the approval of the Secretary of State.

Section 41 (Differential Regulations).—For " High Commissioner " substitute " Secretary of State ".

Section 42 (Native Reserves) and the Southern Rhodesia Order in Council, 1920.—This section to be amended so as to provide for the vesting of the Native Reserves in a Board of Trustees to consist of a nominee of the Secretary of State as Chairman, a Judge of the High Court, and the Chief Native Commissioner.

Consequential amendments of the Southern Rhodesia Order in Council of 1920 would also probably be appropriately effected by the Amending Letters Patent, though the exact procedure requires consideration, and for convenience questions arising from section 42 and the Order in Council are dealt with together under the present heading.

As regards the provisions for the appointment of the members of the Board, it would be convenient that this provision should be by office rather than personal description, e.g., " a nominee of the Secretary of State ", " the Chief Justice " (or " the Senior Puisne Judge "), etc., so as to avoid the necessity for an alteration of the instruments on each new appointment.

Provision in the Letters Patent should also be made for the person authorized to deputise for any member of the Board in his official capacity in the Colony, to deputise also on the Board for such member who may be through illness, absence or other cause, precluded from exercising his functions on the Board.

As regards the procedure of the Board of Trustees, any rules of procedure made by the Board to be subject to the approval of the Secretary of State.

It is understood that the Board's channel of communication with the Secretary of State would be through the Governor, but no specific provision in the Letters Patent is necessary as to this, or as to the duty of the Board to furnish to the Government, or to the Secretary of State, reports as to the Native Reserves.

Similarly it is unnecessary to deal in the constitutional instrument with the question whether the decisions of the Board of Trustees should be by unanimity or by majority, but if the question arises in connexion with the Rules of Procedure of the Board (which would be subject to the Secretary of State's approval) it is agreed that no objection would be raised to provision being made, if this were deemed desirable, that the majority required for a decision of the Board must include the Chairman.

As regards paragraph 2 of section 42 relating to the power vested in the High Commissioner by the Water Ordinance Amendment Ordinance, 1921 (the provisions of which were re-enacted in the Water Act, 1927), provision to be made that this power would be vested in the Board of Trustees.

As regards the Order in Council of 1920, the substitution of " the Board of Trustees " for " the High Commissioner " (except in Article 4, where " the Secretary of State " is to be substituted) would, as noted above, probably be appropriately effected by suitable provision in the amending Letters Patent.

As regards Article 2 of the Order in Council and section 42 (1) of the Letters Patent, it has been represented that it would be desirable for the Board of Trustees to be empowered to permit, in special cases, compensation for removal of natives from their land to be paid in money, instead of taking the form of land—the only compensation at present permitted. This amendment would cover, for example, the case of the native whose kraal is removed to permit of mining operations and who did not wish to be compensated by land outside the reserve. There would appear to be no objection to provision being made to meet such cases provided that an express limit is set to the area which may be taken up in this way in any case where monetary compensation is desired by the natives concerned.

In order to meet such cases as those in which, e.g., a mission wishes to obtain a small piece of reserve land in exchange for other equally good and suitable land outside the reserve, after the words in Article 2 " sole and exclusive use and occupation of the native inhabitants of Southern Rhodesia and ", insert some such words as " save in any special case with the permission in writing of one of our principal Secretaries of State and subject to such conditions as he may prescribe ".

In Article 4 of the Order in Council, the Secretary of State to be substituted for the High Commissioner as the authority for the approval of regulations issued under this section. Consequential revisions of the existing regulations under this section would require consideration, particularly those relating to the establishment and administration of the Native Reserves Trust Fund and it is understood that proposals will be put forward by Mr. Huggins as to such revisions after he has had an opportunity of consulting the Native Affairs Department.

Section 44 (Information for the High Commissioner as to native affairs).—This section to be deleted from the Letters Patent; provision to be made in the Royal Instructions that the Governor should keep the High Commissioner informed regarding native affairs in Southern Rhodesia.

Sections 45 and 46.—These sections to be deleted as agreed in the discussions in 1934.

Section 47.—Reference to the High Commissioner in this section to be eliminated, as agreed in the discussions in 1934, it being understood that the High Commissioner would be kept in touch with any proposals for the establishment of native councils.

Section 58.—The question how far this section would require amendment or whether it might be deleted altogether to be considered by the Law Officers in Southern Rhodesia.

Section 62.—Provided that section 58 can be eliminated, the definition of High Commissioner in this section to be also deleted.

Note.—Neither section 58 nor section 62 is amongst the sections referred to in section 61 of the Letters Patent.

B.—*Native Reserves Forest Produce Act, 1929.*

Section 16.—As a consequence of the vesting of the Native Reserves in a Board of Trustees, for " consent of the High Commissioner " substitute " consent of the Board of Trustees ".

Section 18.—For the same reason, the " approval of the High Commissioner " in this section substitute " approval of the Board of Trustees ".

C.—*Native Reserves Augmentation Act, 1925.*

To be amended so as to vest in the Board of Trustees the land to which it refers, at present vested in the High Commissioner.

D.—*Land Apportionment Act, 1930.*

Section 2.—Delete the definition of " High Commissioner ".

Section 3.—This section to be amended so as to provide that one member of the Land Board should be appointed by the Secretary of State instead of by the High Commissioner.

Section 12.—For the words " subject to the approval of the High Commissioner " substitute " after consultation with the Land Board ".

Section 13.—For " approval of the High Commissioner " substitute " the approval of the Secretary of State ".

Sections 18 and 19.—Substitute " Secretary of State " for " High Commissioner " in all cases where the latter expression occurs.

Section 88.—Substitute " Secretary of State " for " High Commissioner ".

(*Note.*—It would be desirable that the necessary legislation amending the Act should make it clear that *existing* regulations made under this section would not be required to be referred for the Secretary of State's approval.)

LAND APPORTIONMENT ACT

Suggested Amendment of

10329/29. No. 195.

MR. A. D. CHATAWAY (PRIVATE SECRETARY TO PRIME MINISTER, SOUTHERN RHODESIA)

to

MR. H. N. TAIT (DOMINIONS OFFICE).

Office of the High Commissioner for Southern Rhodesia,
London, W.C.2, 18th July, 1934.

SIR,

I have been directed by Mr. Huggins to forward you the enclosed notes on the amendments which are proposed should be made to the Land Apportionment Act, 1930. This is one of the subjects which Mr. Huggins is anxious to discuss with Sir Edward Harding.

I have, &c.,

A. D. CHATAWAY,
Private Secretary to the Prime Minister.

Enclosure in No. 195.

PROPOSED AMENDMENTS TO THE LAND APPORTIONMENT ACT, 1930—SOUTHERN RHODESIA.

Period allowed for movement of natives:—

Section 21 of Part VI of the Act requires that, except as specifically provided in the Act, no native shall after the date of the coming into force of the Act hold or occupy land in the European area.

The only modification of Section 21 with which we are concerned in considering the above provision is contained in Section 24, which enacts that notwithstanding the provisions of the Private Locations Ordinance, 1908—which is an Ordinance regulating the squatting of natives on privately-owned land—no agreements to occupy land in the European area on payment of rent entered into before or after the taking effect of the Act shall remain in force beyond a period of six years from that date. The Act came into force on the 1st April, 1931. Consequently all natives residing on privately-owned land, under rent paying agreements (except in areas excluded from this provision by Section 25 of the Act) should move into the native area on or before the 31st March, 1937.

There are at present some 180,000 natives residing on privately-owned land in the European area. Some of them are tenants under labour agreements, and will therefore not be affected by the provisions quoted above, but it is safe to say that 100,000 natives will eventually have to be moved.

It would seem that the implications of the Land Apportionment Act had not been studied or understood in the past, for until recently no adequate preparation had been

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attempted to provide for the large number of people concerned, and until such preparations are completed, it will be impossible to move them without inflicting considerable hardship.

The preparation required consists of—

(1) A survey of the Native Reserves to ascertain what additional population they can hold.

(2) The development and conservation of water supplies to increase the carrying capacity of the Reserves.

(3) Adequate notice to the natives concerned, and their gradual evacuation from the European areas, and settlement in the native areas over a period of years.

All the above requirements are now under way, but as both survey and development of water supplies take time, it will be impossible to advance matters at such a pace that the provisions of the law can be carried out by the 31st March, 1937, without unnecessary hardship. It is therefore desired to amend Section 24 of the Act to permit of the natives being gradually moved into the native area over a period extended to the 31st March, 1941.

Unsuitability of certain areas for native settlement:—

The areas in which natives may acquire individual ownership to land are defined in Schedule I of the Act. These areas include a long narrow strip in the Bubi district, bounded on the north by the Gwampa River and the Shangani Native Reserve; on the east by the north-west boundary of Kenilworth Block; on the south by the northern boundaries of Gourlay Block, Goodwood Block, Molecomb, and Pioneer Block East; on the west by the Pioneer Block East to where its boundary crosses the Bubi River, and thence down this river to its junction with the Gwampa River.

In 1931 the Chief Native Commissioner reported that the bulk of this area (probably nine-tenths or more of it) is entirely unfit for human habitation, as it consists of waterless kalahari sands, carrying a dense growth of teak and other indigenous forest trees, but apart from the narrow Gwampa Valley, and a few open glades in the forest, contains no agricultural land or grass land for pasture. The Gwampa Valley on an average is not more than 600 yards wide, and half its width is in the Shangani Native Reserve. This report was subsequently confirmed by the Government Forestry Department, and by the Native Land Board, who made a detailed inspection of it last year.

It is therefore desired to surrender the area described above, and to provide an equivalent area of land elsewhere, which will be capable of settlement by natives.

Urban Areas:—

The only other portion of the Act upon which the advice of His Majesty's Government is sought is Part VIII.

Under the law of Southern Rhodesia there is nothing to prevent a native acquiring as owner, or occupying as lessee, a shop or business premises within any town or municipal area, but Part VIII of the Act provides that " it shall be lawful for the Governor-in-Council to approve of an area or areas, set aside by the Municipality or Town Management Board *for the occupation of and use by natives* under by-laws and regulations of such Local Authority."

The next paragraph of the Act goes on to provide that after the approval of the setting aside of such an area has been notified in the Gazette, it shall not be lawful for a person other than a native to " *own or occupy* " as lessee any land, house, shop, etc. within such area, or for a native to own, or occupy as lessee any house, shop, etc. within the boundaries of the town or municipal lands, elsewhere than in the area or areas set aside for natives.

The meaning of the section quoted above is not too clear, and has given rise to considerable controversy.

The Commission of 1925, upon whose report and recommendations the Act is based, comment on this matter in paragraphs 368 to 383 of their report. They state (paragraph 370) that as towns are part of the European area, it is right that European interests should predominate there, and it seems fairly clear from paragraph 376 of their report that they did not contemplate that natives should be able to do more than lease stands for the erection of shops and business premises. But in paragraph 378 they somewhat cloud the issue by a recommendation that natives should be allowed to " acquire " land for residential sites, without making it clear whether they mean the acquisition of leasehold, or ownership to a site.

The view most generally held by Europeans in Southern Rhodesia is that the townships are essentially European areas, in which it would be contrary to the whole spirit of the Land Apportionment Act to grant natives the right of ownership in land. It is most desirable that there should be no ambiguity in the law relating to this matter.

It is, therefore, the wish of the Government of Southern Rhodesia to amend the relative sections of the law, so as to make it quite clear that where a native area or areas are proclaimed within a Municipal area, natives may acquire the lease of sites for residences, shops, and other business premises, but not the ownership of such sites.

C. L. CARBUTT.

10329/29.

No. 196.

SIR EDWARD HARDING (DOMINIONS OFFICE)

to

MR. G. M. HUGGINS (PRIME MINISTER, SOUTHERN RHODESIA).

(Confidential.)

DEAR MR. HUGGINS, Downing Street, 30th July, 1934.

Since our discussion last week we have considered further the memorandum* by Colonel Carbutt on the subject of the Southern Rhodesia Land Apportionment Act. As I explained it is felt that Sir Herbert Stanley should have an opportunity of considering the memorandum, but subject to his views, no objection is seen in principle to an amendment of the Act to deal with the first two points mentioned in the memorandum (as to the period allowed for the movement of natives, and the exchange of a certain native area for other land) which it is understood are put forward as being in the interests of the natives.

As to the third point, regarding the urban areas, we have been looking up the history of Section 32 of the Act, and we find that in the relevant Section (31) of the Bill as first introduced in 1929 the words used were "it shall be lawful for the Governor-in-Council to approve of any area or areas set aside by a Municipality or Town Management Board or other local authority for the sole and exclusive occupation of and *purchase* by natives under by-laws and regulations of such Muncipality, Town Management Board or local authority". It would appear from this that it was originally contemplated that the natives should be able to acquire the ownership of land in the urban native areas, and this seems to be confirmed by certain remarks made by Mr. Moffat in the debate on the Bill, when he pointed out that the native had the right to buy stands in the towns and that this right could not be taken away lightly (the reference is to columns 1367-8 of Volume 8 of the Southern Rhodesia Debates). Subsequently, however, the word "purchase" was changed to "use" before the Bill was passed. The exact intention of this alteration is not altogether clear to us from the debates—Mr. Moffat spoke of it as a "detail which rather strengthens the meaning".

As regards the purely legal aspect of the matter you may like to know that our Legal Adviser points out that the first paragraph of Section 32 (1) only mentions occupation and use, and that both these expressions would be adequately met by lease-hold tenure. The second paragraph of the sub-Section merely provides that where the native areas have been set aside a native shall not own or occupy as lessee land outside the reservation, and there is nothing in that paragraph which in his opinion could be construed to extend the meaning of "occupation and use" in the first paragraph. The Section could of course only be interpreted conclusively by the Courts, but if your Law Officers agree with our Legal Adviser's view you may consider that the question of an amendment of the Section need not be pursued. In any case, however, we think that it would be useful if, as was suggested, Colonel Carbutt could have a talk with Sir Herbert Stanley on the matter during his journey back to Southern Rhodesia, since we feel that the matter is one which requires consideration in detail, and that a good deal would depend upon how the proposal would be worked in practice, *e.g.*, on what terms and conditions leases would be given to natives in the urban native areas.

I am sending a copy of Colonel Carbutt's memorandum and of this letter to Sir Herbert Stanley. I should perhaps mention that the latter will, I understand, be at Pretoria (not Cape Town) at the end of August.

Yours, &c.,

E. J. HARDING.

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* Enclosure in No. 195.

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10329/29.

No. 197.

SIR EDWARD HARDING (DOMINIONS OFFICE)

to

SIR HERBERT STANLEY (HIGH COMMISSIONER, SOUTH AFRICA).

[*Answered by No. 198.*]

(Confidential.)

MY DEAR STANLEY, Downing Street, S.W.1, 15th August, 1934.

I enclose for your information copies of

(*a*) a memorandum* by Colonel Carbutt relating to suggested amendments to the Southern Rhodesia Land Apportionment Act;
(*b*) a note† of a discussion which we had here with Mr. Huggins on the subject;
(*c*) a letter‡ which I subsequently sent to Mr. Huggins.

I think these documents sufficiently explain themselves. You will see that it has been suggested that Colonel Carbutt (who sails on the 10th August) should have a talk with you on the subject, and we should be glad to have your observations in due course on the points raised.

So far as we can judge the only difficult point seems to be that relating to the position of natives in the urban areas. On Bushe's view of the Act no amendment is necessary to enable the Southern Rhodesia Government to give effect to their wishes, and if Mr. Huggins accepts this view the Secretary of State has not really any *locus standi* in the matter. We must, however, be prepared for possible legislation and in any case it will be useful for the Southern Rhodesia Government to have your advice in the matter. We are inclined to think ourselves that freehold tenure by natives in the urban native areas would not seem essential provided that they can obtain leases on reasonable terms giving fair security of tenure; but a good deal will depend upon how the proposal is to be worked in practice.

Yours, &c.,

E. J. HARDING.

10329/30.

No. 198.

SIR HERBERT STANLEY (HIGH COMMISSIONER, SOUTH AFRICA)

to

SIR EDWARD HARDING (DOMINIONS OFFICE).

(Received 5th October, 1934.)

[*Answered by No. 200.*]

(Confidential.)

MY DEAR HARDING, High Commissioner's Office, Pretoria, 24th September, 1934.

I am obliged to you for your confidential letter of the 15th August§ about certain amendments suggested by Huggins to the Southern Rhodesia Land Apportionment Act.

Through some oversight the note of a discussion with Huggins which you enclosed was not on that subject, but on the Carbutt-Huggins scheme for the division of the British Central African Territories collectively into two spheres, European and native.

I have since received (under cover of your confidential letter of the 22nd August‖) a copy of the note of the discussion on the Land Apportionment Act. It arrived here on the morning of the 12th September—the morning, as it happened, on which Carbutt came to see me—and I had not been able to read it before I had my talk with him. This did not, however, handicap me in forming and expressing my views.

Upon the first proposal, viz., the extension of the period within which natives must be moved into the native area from the 31st March, 1937, to the 31st March, 1941, I told Carbutt that I was prepared to support the contemplated amendment.

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* Enclosure in No. 195. † Not printed. ‡ No. 196. § No. 197. ‖ No. 207.

Upon the second proposal, viz., the exchange of a certain strip of native area land in the Bubi District for other land more suitable to native occupation, I told Carbutt that, subject to the understanding that the land to be assigned in exchange was adequate in area and in other respects, I would raise no objection. He showed me on a map an area of land (contiguous to a Native Reserve) which had provisionally been considered for conversion into native area in exchange for the strip to be surrendered; so far as one could form an opinion merely from looking at a map, it seemed to me suitable, but I asked Carbutt to consider the expediency of enlarging it so that it might join native area at both ends, and thus form a sort of continuous buffer along one side of the Reserve. This would accord with my understanding of the Prime Minister's desire for concentration of the natives into relatively large continuous blocks of land. Carbutt saw the force of the suggestion and said that he would mention it to the Government, but that he could not be sure at present whether the Government would feel able to give to the natives an area very much more than equivalent to that which they proposed to take from them, especially if the exchange involved any large expense in buying out European owners. However that may be, I think there is every intention to make sure that the natives do not lose by the exchange, and that is all on which we are entitled to insist.

Upon the question of the tenure of land by natives in the municipal areas assigned or to be assigned for native occupation, we had a long discussion.

I said that generally my feeling would be adverse to taking away from natives any right which had been conferred on them by statute unless there were some good reason in native as well as European interests for such action, but that in this particular instance it seemed doubtful whether the intention of the law had been to give natives the right of acquiring freehold title to land in such municipal areas. On merits it seemed to me that there was a good deal to be said against the establishment of native families in ownership of such land, as this might eventually lead to the creation of slum conditions, but on the other hand I thought that there ought to be provision for some reasonable security of tenure both for trading and for residential purposes, and that the question of compensation for permanent improvements or for the goodwill of a business, in the event of the termination of the occupant's tenure, ought perhaps also to be considered. If Europeans were to have a complete monopoly of all trading rights within the European area of the municipality, it would seem only fair that natives should not be debarred from trading within the native area of the municipality, and if they did eventually take to trading and opened stores in that area and conducted them properly, they ought not to be liable to eviction at the mere whim of the municipal authorities. As regards residential rights, I recognized that the primary intention of the establishment of such native areas on municipal land was to accommodate therein natives employed in industrial, commercial, or domestic service within the European municipal area during such employment, as temporary residents with their permanent homes in the Reserves or in non-municipal native areas, to which they would return upon the cessation of such employment. I was not at all desirous of creating a de-tribalized, permanently urban native population, but there were cases now, and there might very likely be more in the future, where natives, in the course of very long uninterrupted service to Europeans, had lost touch with their tribal antecedents and had begotten children to whom tribal life and its agricultural or pastoral implications were entirely unfamiliar. Such people had in fact become urbanized and they and their children could not be said to have, outside of urban areas, any permanent home in which they could live and maintain themselves. If they were to be evicted from the huts or cottages which they had occupied in the municipal native area so soon as, through illness or old age or the closing down of some business or workshop in the municipal European area, they lost their employment, they might be exposed to complete homelessness and even to starvation. It seemed to me important, therefore, that some kind of leasehold tenure should be made possible for natives within these urban areas, and that the termination of any such lease during its currency, or a refusal to renew it upon its expiration, should be subject to Government approval. (I think that the Government, on whom the liability for providing for homeless de-tribalized natives would inevitably fall, could be trusted to prevent, through its Native Department, the municipal authorities from causing avoidable hardship.)

The upshot of the conversation was that I made it clear to Carbutt that I would not press for rights of ownership by natives in respect of land within the municipal native areas, but that I should require to be satisfied that natives in those areas would enjoy reasonable protection of tenure for trading and, where necessary, for residential purposes, and be entitled to reasonable compensation for trading goodwill and permanent improvements.

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I hope this will give you sufficient material for your promised further communication to Huggins. I did not express to Carbutt any opinion on the legal interpretation of the relevant sections of the Act. He seemed a little dubious whether it was clear that they had not given natives the right of ownership, and I was more concerned to make use of any uncertainty that might be felt in Salisbury on that point as a lever for stipulations than to suggest to him that an amendment of the Act was not necessary for the withholding of such right of ownership.

Perhaps it might suffice if Huggins were told by telegraph that I have reported on my recent conversation with Carbutt, and that the Secretary of State associates himself generally with the views which I expressed to Carbutt.

There can now, of course, be no question of legislation until after the General Election, but it is conceivable that Huggins might be pressed for a statement of policy in the course of the campaign.

During my talk with Carbutt, the larger scheme (for the division of Central Africa into separate European and native states) was touched upon. I was very cautious in what I said. I pointed out a few obvious difficulties, but did not throw cold water on the whole scheme, which indeed, I think, has in it the germ of something that might be worthy of further consideration. If you will refer to a confidential letter which I wrote to you on the 27th July, 1933*, you will find in its last paragraph a suggestion for the conversion of the portions of Northern Rhodesia other than the Railway Strip and the Copper Belt into separately administered native territory under direct Imperial control. I gathered from Carbutt that he was envisaging not only the non-Europeanized portions of Northern Rhodesia, but also the whole, or practically the whole of Tanganyika as the area of his future native state. But the scheme is rather nebulous at present. I dare say I shall hear a good deal more about it from Huggins and Carbutt when I am established at Salisbury. I do not like the idea of depriving the natives in Southern Rhodesia of all and any prospect of political rights there, though I am quite sure in my own mind that the franchise of the Colony cannot indefinitely be left capable of producing a state of affairs in which the Europeans might become a hopeless minority of the electorate, and I do not think that the mere course of time will make the solution of the problem any easier or the eventual result more satisfactory in the interests of the natives.

Yours, &c.,

H. J. STANLEY.

10329/30. No. 199.

SIR EDWARD HARDING (DOMINIONS OFFICE)

to

MR. G. M. HUGGINS (PRIME MINISTER, SOUTHERN RHODESIA).

(Confidential.)

DEAR MR. HUGGINS, Downing Street, S.W.1, 3rd January, 1935.

With reference to my confidential letter of the 30th July† regarding the memorandum by Colonel Carbutt on the subject of the Southern Rhodesia Land Apportionment Act, we received from Sir Herbert Stanley a report‡ of the discussion which he had, as High Commissioner, with Colonel Carbutt at Cape Town on 12th September, and it may be useful for you to have a copy of the enclosed, a memorandum which sets out the views which he then expressed with regard to the three proposals contained in Colonel Carbutt's memorandum. We should be glad if you would take these views into consideration in drafting any amendments to the Act which you may desire to make.

I am sending a copy of this letter to Sir Herbert Stanley direct§.

Yours, &c.,

E. J. HARDING.

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* No. 11969/58: not printed. † No. 196. ‡ No. 198. § No. 200.

Enclosure in No. 199.

MEMORANDUM ON PROPOSALS FOR THE AMENDMENT OF THE SOUTHERN RHODESIA LAND APPORTIONMENT ACT.

As regards the first proposals, viz., the extension of the period within which natives must be moved into the native area from the 31st March, 1937, to the 31st March, 1941, the contemplated amendment is supported by Sir Herbert Stanley.

No objection is seen also to the second proposal, viz., the exchange of a certain strip of native area land in the Bubi District for other land more suitable to native occupation, subject to the understanding that the land to be assigned in exchange is adequate in area and in other respects. Sir Herbert Stanley observes that so far as an opinion can be formed from a study of a map, the area of land (contiguous to a Native Reserve) which has provisionally been considered for conversion into native area in exchange for the strip to be surrendered, appears to be suitable. He suggests, however, that it would be well if consideration could be given to the expediency of enlarging it so that it might join native area at both ends, and thus form a sort of continuous buffer along one side of the Reserve. This would accord with what is understood to be the Prime Minister's desire for concentration of the natives into relatively large continuous blocks of land.

As regards the third proposal, viz., the question of the tenure of land by natives in the municipal areas assigned or to be assigned for native occupation, Sir Herbert Stanley observes that, on general grounds, it is undesirable to take away from natives any right which has been conferred on them by statute unless there is some good reason in native as well as European interests for such action, but that in this particular instance it seems doubtful whether the intention of the law had been to give natives the right of acquiring freehold title to land in such municipal areas. On merits there is no doubt a good deal to be said against the establishment of native families in ownership of such land, as this might eventually lead to the creation of slum conditions, but on the other hand there ought to be provision for some reasonable security of tenure both for trading and for residential purposes, and the question of compensation for permanent improvements or for the goodwill of a business, in the event of the termination of the occupant's tenure, ought also to be considered. If Europeans are to have a complete monoply of all trading rights within the European area of the municipality, it would seem only fair that natives should not be debarred from trading within the native area of the municipality, and if they do eventually take to trading and open stores in that area and conduct them properly, they ought not to be liable to eviction at the mere whim of the municipal authorities. As regards residential rights, it is recognized that the primary intention of the establishment of such native areas on municipal land is to accommodate therein natives employed in industrial, commercial, or domestic service within the European municipal area during such employment, as temporary residents, with their permanent homes in the Reserves or in non-municipal native areas, to which they would return upon the cessation of such employment. It is, of course, very undesirable to create a de-tribalized, permanently urban, native population, but there are cases now, and there may very likely be more in the future, where natives, in the course of very long uninterrupted service to Europeans, have lost touch with their tribal antecedents and have begotten children to whom tribal life and its agricultural or pastoral implications are entirely unfamiliar. Such people have in fact become urbanized and they and their children cannot be said to have, outside of urban areas, any permanent home in which they can live and maintain themselves. If they were to be evicted from the huts or cottages which they have occupied in the municipal native area so soon as, through illness or old age or the closing down of some business or workshop in the municipal European area, they lost their employment, they might be exposed to complete homelessness and even to starvation. It seems important, therefore, that some kind of leasehold tenure should be made possible for natives within these urban areas, and that the termination of any such lease during its currency, or a refusal to renew it upon its expiration, should be subject to Government approval, since the liability for providing for de-tribalized natives who were thereby rendered homeless would fall upon the Government.

In short, while it is not desired to press for rights of ownership by natives in respect of land within the municipal native areas, it is important that natives in those areas should enjoy reasonable protection of tenure for trading and, where necessary, for residential purposes, and be entitled to reasonable compensation for trading goodwill and permanent improvements.

10329/30.

No. 200.

SIR EDWARD HARDING (DOMINIONS OFFICE)

to

SIR HERBERT STANLEY (HIGH COMMISSIONER, SOUTH AFRICA).

(Confidential.)

MY DEAR STANLEY, Downing Street, S.W.1, 3rd January, 1935.

Thank you for your confidential (High Commissioner's) letter of the 24th September* from Pretoria about your discussion with Colonel Carbutt on the subject of the Southern Rhodesia Land Apportionment Act. We thought that it was hardly necessary to communicate further with Mr. Huggins while the election campaign was in progress, but I now enclose under flying seal, a letter† to him enclosing a memorandum based on the relevant sections of your letter, so that he may have a written record of your views as High Commissioner.

This seems, on the whole, the most convenient course, and unless you have any observations or criticisms on the memorandum, will you pass the documents on and keep the copies enclosed. Also will you let Clark know the action taken. I am sending him a copy of this letter and of its enclosures.

Yours, &c.,

E. J. HARDING.

MOZAMBIQUE

Channel of communication between Southern Rhodesia and Portuguese East Africa

11481/130.

No. 201.

SIR EDWARD HARDING (DOMINIONS OFFICE)

to

SIR HERBERT STANLEY (GOVERNOR, SOUTHERN RHODESIA).

[Answered by No. 202.]

(Extract.)

(Personal and Confidential.)

MY DEAR STANLEY, Downing Street, S.W.1, 30th March, 1935.

You may remember that on the 22nd August‡ last I sent you a copy of a note of a talk which Mr. Huggins had on the 30th July with Mounsey at the Foreign Office about the channels of communication between the Government of Southern Rhodesia and the Portuguese Administration at Beira. (I enclose a further copy for convenience of reference—a copy was sent to Sir Fraser Russell at the time.) While we were considering the matter with the Foreign Office on the basis of that note I received a letter from Mr. Huggins, in which he reverted to this, among other matters, and I enclose an extract from his letter and the enclosure to it.

As the result of further consideration of the matter in the light of this letter, the Foreign Office, who welcome the suggestion in principle, felt that it would be necessary in the first instance to consult His Majesty's Ambassador at Lisbon, as in the enclosed despatch of the 22nd December. No official reply has yet been received to that despatch but you will see from Sir Claud Russell's letter to Leigh Smith of the 29th January§ of which a copy is enclosed that he favours the idea in principle, while deferring a final opinion until he has received the views of the Consular Officers at Beira and Lourenço Marques. You will further see from the Foreign Office despatch of the 3rd January§ about the delimitation of the Beira Consular District, that in connexion with that matter consideration is being given to a possible desire on the part of Mr. Huggins to extend the scope of the proposals.

The whole matter will presumably come up again when Mr. Huggins is here in May, but I thought that you would like to have, for your private and personal information, some account of how and on what lines the matter is progressing.

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* No. 198. † No. 199. ‡ 11481/116: not printed. § Not printed.

The despatch to His Majesty's Ambassador, of course, puts the matter in its simplest terms but there are in fact a good many minor points in regard to which Mr. Huggins' proposals are not quite clear or on which we may not be wholly able to meet his views.

In the first place, there is some confusion in his letter (and in the note of the discussion) between Portuguese East Africa and the Mozambique Company's Territory. Clearly His Majesty's Consul at Beira can only communicate with the authorities of his Consular district, and we are therefore regarding the proposal for the present as restricted to communications with the Mozambique Company's Territory (though if the Consular district were to include, for example, the district of Tete, that would facilitate the extension of the scope of the arrangement if desired).

Secondly, there is the passage in Mr. Huggins' letter to the effect that " when some agreement had been reached in the negotiations, I should then use the proper channels, through His Excellency the Governor with a view to final settlement ". We are not clear whether Mr. Huggins has in mind here exchanges of notes which would have the force of " treaty engagements ", but if so, the appropriate channel would seem to be that at present employed—namely His Majesty's Ambassador and the Portuguese Government. That is a point which we may have to clear up when Mr. Huggins is here.

Thirdly there is the suggestion that the Consul might be known as " British Consul and Southern Rhodesian Agent ". The Foreign Office have investigated the matter and find that the Transvaal analogy on which Mr. Huggins based his suggestion is not a good one. The facts are that it was arranged in 1903 that His Majesty's Consul-General at Lourenço Marques should represent there the Central South African or Transvaal Railways; the first and only one of His Majesty's Consuls-General to discharge the duties of representative was Major (now Sir John) Baldwin and as he represented the Railways not the Transvaal itself he never appears to have used the title of Transvaal Agent. But in any case the Foreign Office take the view, which we are disposed to share, that as the Consul at Beira will be concerned with the protection of the interests of all parts of the Empire, he requires no other title than " His Majesty's Consul " to enable him to act on behalf of Southern Rhodesia or any other British territory, and that the expression " Southern Rhodesian Agent " would be a superfluous and inappropriate addition, which would not, in fact assist him in his relations with the Mozambique Company's Territory.

On the question of the exact method of communication with His Majesty's Consul Mr. Huggins will no doubt consult with you, if he has not already done so, since his proposal is that such communications should go direct from the Prime Minister and not through the Governor. I suppose however that it could be arranged that you should see, or receive copies of, all correspondence with the Consul.

* * * * *

Yours, &c.,
E. J. HARDING.

Enclosure 1 in No. 201.

NOTE.

At 11.15 on the 30th July Mr. Huggins saw Sir George Mounsey of the Foreign Office. Mr. McSweeney was also present. Mr. Huggins explained that communications with Portuguese East Africa were of great importance to Southern Rhodesia and he was anxious that the channels of communication should be improved. At present it was necessary for correspondence to be carried on through the Governors of the two territories, which involved a multiplicity of correspondence. The Colony had extremely close relations with Portuguese East Africa, but their feeling was that they had not the direct form of representation which the close relations rendered desirable. They wanted something more distinctive than they had now. They had a trade representative who was a senior customs official, but the holder of this post changed fairly frequently and he knew no Portuguese. The inhabitants of the Colony were tending to ask for special representation and he himself would prefer it if the Government, understood as the elected Government, were to be responsible for the liaison with Portuguese East Africa. Would it not be possible for them to be allowed to communicate direct with the Consul at Beira, it being understood that the end of such transactions might take the form of an exchange of notes between the Governments.

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Sir George Mounsey said that speaking personally he thought that the suggestion was an excellent one and he promised that it would be considered. He agreed that it was important that the Consul of Beira should be well informed about Southern Rhodesian questions, and he felt that there was a great deal to be said for his being made an intermediary between Southern Rhodesia and Portuguese East Africa. He promised that the Foreign Office would consult with the Dominions Office so that Mr. Huggins could be informed in due course what decision was reached in the matter.

Enclosure 2 in No. 201.

(Extract.)

Office of the Prime Minister, Salisbury,
Southern Rhodesia, 10th September, 1934.

DEAR SIR EDWARD HARDING,

Whilst in London I discussed with the Foreign Office the relationship between Southern Rhodesia and the British Consul at Beira, and they stated that there would be no necessity for me to put anything in writing: that they had taken notes and would consult with the Dominions Office.

What I proposed to the Foreign Office was that the Prime Minister should write direct to the British Consul at Beira on all matters as between ourselves and the various foreign potentates in Portuguese East Africa; that when some agreement had been reached in the negotiations, I should then use the proper channels, through His Excellency the Governor, with a view to final settlement.

I enclose copy of a recent despatch which deals with a trivial matter between ourselves and the Portuguese. Now this is a matter that could be settled in five minutes by the British Consul and the Governor of Tete if I could use the services of the British Consul direct. There would actually be no necessity for this matter to go through our Governor or the Governor of the Mozambique Company's Territory at all.

I learnt on my return that after the Boer War, Lord Milner arranged that the British Consul-General at Lourenço Marques should also be Transvaal Agent, and what I would like you to propose to the Foreign Office, if you agree with the suggestion, is that the British Consul at Beira be known as the British Consul and Southern Rhodesian Agent.

We are getting on extremely well with the Portuguese at the present time, and I think this more intimate contact would assist our relations more than any other reform that can be thought of.

* * * * * * * *

Sir Edward Harding, K.C.M.G.,
Dominions Office,
London.

NOTES OF A MEETING BETWEEN THE HONOURABLE G. M. HUGGINS AND SIR GEORGE MOUNSEY AT THE FOREIGN OFFICE ON 30TH JULY, 1934.

Mr. Huggins explained that the present channel of communications between Southern Rhodesia and the Government of Portuguese East Africa was through the respective Governments on two territories. Vice-Consul E. J. Joint had just completed an informal survey of the possibilities of trade between Rhodesia and her immediate neighbours, and Mr. Huggins thought that if the Customs Convention of the Union of South Africa was not renewed Rhodesia would look to a large extent to trade with her neighbours on the coast.

The present method of communication with Portuguese East Africa, he thought, should be improved upon, and he wanted to suggest that any matters which required discussion between the two Governments should be dealt with by the British Consul at Beira first, and then confirmed formally by an exchange of minutes between the Governors.

Rhodesia had intimate relations with Portuguese East Africa in many ways, and the general public felt that Rhodesia should be represented at Beira.

The Senior Customs Officer stationed at Beira had been appointed *ex officio* trade representative. This was not highly satisfactory, however, as his status was uncertain, and this officer was usually changed from time to time, and consequently none of the holders of the office knew the Portuguese language.

Mr. Huggins stated that he realized that any alteration in procedure would have to be effected with the consent of the Governor of Southern Rhodesia.

Sir G. Mounsey said that his department would consider Mr. Huggins' proposal. He personally thought it was a very good idea. It had been decided to station a full Consulate at Beira, in lieu of the Vice-Consulate. He thought that the Consul could be an intermediary between the Government of Southern Rhodesia and the Government of Beira, and furthermore, it was important for a Consul to know what questions were raised by Southern Rhodesia with Portuguese East Africa, and to report if necessary on these to the Foreign Office.

Enclosure 3 in No. 201.

(No. 383.)

SIR,

Foreign Office, S.W.1, 22nd December, 1934.

As you were informed in my despatch No. 332 of 26th October last, Mr. A. G. Ponsonby has been appointed to be His Majesty's Consul at Beira, a new post recently sanctioned by the Lords Commissioners of His Majesty's Treasury to replace the vice-consulate hitherto existing at that post.

2. In the course of a visit to this country some months ago the Prime Minister of Southern Rhodesia discussed with a member of this department the question of communication between the Government of Southern Rhodesia and the Government of the Mozambique Company's territory. Mr. Huggins expressed the opinion that the procedure hitherto followed of direct communication between the Governor of the British Colony and the Governor of the Mozambique Company's Territory should be improved, and he went on to suggest that matters requiring discussion between the Government of Southern Rhodesia and the Government of the Mozambique Company's Territory should be dealt with, in the first instance, by His Majesty's Consul at Beira. Mr. Huggins was informed that his suggestion would be considered.

3. Your Excellency will observe that what the Southern Rhodesian Prime Minister seeks is, in effect, an arrangement under which His Majesty's Consul would, at the direct request of the Southern Rhodesian Government, communicate on their behalf with the Government of the Mozambique Company's territory. Having regard to the close relations between Southern Rhodesia and the Mozambique Company's territory Mr. Huggins' suggestion is not unreasonable, and, subject to your views, I am disposed to acquiesce in its adoption, on the understanding that His Majesty's Consul would, at his discretion, be able to refer to me any question which, in his opinion, called for prior consultation with His Majesty's Government in the United Kingdom. With this safeguard, the arrangement would appear to have the merit of enabling His Majesty's Government to keep themselves informed of and, if desirable in particular instances, to exercise some influence over, direct dealings between the Southern Rhodesian Government and the Government of the Mozambique Company's Territory.

4. I shall be glad if you will examine the suggestion made by the Prime Minister of Southern Rhodesia in the light of these considerations, and will in due course inform me whether you see any objection to an arrangement of the kind desired by Mr. Huggins.

5. Copies of this despatch are being sent to His Majesty's Consul-General at Lourenço Marques and His Majesty's Consul at Beira.

I am, &c.,

PATRICK ROBERTS,

for the Secretary of State.

His Excellency
Sir Claud Russell, K.C.M.G.,
&c., &c., &c.,
Lisbon.

11481/140.

No. 202.

SIR EDWARD HARDING (DOMINIONS OFFICE)

to

SIR HERBERT STANLEY (GOVERNOR, SOUTHERN RHODESIA).

[*Answered by No. 203.*]

(Personal and Confidential.)

MY DEAR STANLEY,

Downing Street, S.W.1, 12th November, 1935.

You will remember that I wrote to you on the 30th March* about the question raised by Mr. Huggins last year of the possibility of using His Majesty's Consul at Beira as the channel of communication between Southern Rhodesia and the Portuguese Administration at Beira.

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* No. 201.

Mr. Huggins did not revert to the matter at all when he was here this summer as we thought that he might, and as we were still awaiting the final views of the Embassy at Lisbon, we thought it best to refrain from mentioning it ourselves.

We have now, however, heard from Sir Claud Russell that, after having received the views of His Majesty's Consul-General at Lourenço Marques and His Majesty's Consul at Beira, he definitely concurs in the proposals set out in the Foreign Office despatch of the 22nd December, 1934*.

As we were not in a position to discuss the matter with Mr. Huggins when he was here, perhaps you would be good enough to tell him that the necessary preliminary consultations with His Majesty's Embassy at Lisbon and with the Consular Officers concerned (which have taken longer than was anticipated) have now been completed, that they are in entire agreement with the proposals and that the Secretary of State for Foreign Affairs is now ready to issue the necessary instructions to His Majesty's Consul at Beira, so that he may act as a direct channel of communication between the Government of Southern Rhodesia and the Government of the Mozambique Company's Territory. Mr. Huggins will no doubt agree that discretion should be left to His Majesty's Consul to refer home any question which in his view called for prior consultation with the United Kingdom Government and this is a point to which the Foreign Office attach some importance though it is hardly to be anticipated that the necessity for such reference will often arise.

Before instructions are issued to His Majesty's Consul at Beira, however, we should like to have Mr. Huggins' views on one or two points which have arisen in the course of the consultation with the Embassy at Lisbon.

In the first place, as he will be aware from the Secretary of State's confidential despatch No. 45 of the 28th January† and previous correspondence, the Charter of the Mozambique Company is due to expire in the next five or six years, when the Territory of the Company will, it is understood, be absorbed into the Province of Zambesia. The suggestion has been made that, as the proposed arrangements must in these circumstances be short-lived, it may perhaps not be thought worth while to establish them at all. That is, of course, advanced merely as a practical point, not as an argument against the idea, and we feel that it is one which we must leave entirely to Mr. Huggins.

There is a second small point raised by His Majesty's Consul, namely the fact that the post at Beira is sometimes left in the charge of a "non-career" Consul. He assumes however that the communications passing through the Consulate are not likely to be often of such a nature as to make it undesirable for a trading consul to see them and that Mr. Huggins does not anticipate any difficulties on that score.

Would you please let us know Mr. Huggins' views on the above points so that we may know how to proceed?

It hardly seems to be likely that any of the points mentioned in my letter of the 30th March will be raised by Mr. Huggins at this stage. But if he should revert to the question of giving the Consul the additional title of "Southern Rhodesia Agent" there would, I think, be no harm in your telling him what you understand our views are (on the lines indicated in my letter of the 30th March).

Perhaps I should add, with reference to the last sentence of the second and fifth paragraphs respectively of my letter of the 30th March, that the Foreign Office feel that it would be best, at any rate at present, not to make any suggestion, based upon the limits assigned to the Beira Consular district, as to a possible extension of the arrangement beyond the limits of the Mozambique Company's territory. They point out, as regards places outside that territory but within the Beira consular district, that the Consul can always take up with the provincial authorities minor questions affecting British interests without any special arrangements, but that there can, in fact, be no question of communications from the Government of Southern Rhodesia through the Consul to the local officials at such places.

Yours, &c.,

E. J. HARDING.

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* Enclosure 3 in No. 201.

† 11481/127: not printed.

11481/142. No. 203.

SIR HERBERT STANLEY (GOVERNOR, SOUTHERN RHODESIA)

to

SIR EDWARD HARDING (DOMINIONS OFFICE).

(Received 19th December, 1935.)

[*Answered by No. 204.*]

MY DEAR HARDING, Salisbury, 6th December, 1935.

I am much obliged to you for your personal and confidential letters of the 30th March* and the 12th November† respectively upon the question of the possibility of using His Majesty's Consul at Beira as the channel of communication between the Governments of Southern Rhodesia and of the Mozambique Company's Territory.

I enclose copies of a confidential letter from myself to the Prime Minister and of his reply. You will see that Huggins would like the suggested instructions to the Consul at Beira to be issued.

After receiving his letter I spoke to him and pointed out that the proposed arrangement would not be applicable to any inter-Governmental negotiations in regard to recruitment of labour or other matters in the district of Tete, as that district did not form part of the Mozambique Company's territory and was not within the Consular District of His Majesty's Consul at Beira. He said that he had overlooked this circumstance, and he asked me to ascertain whether it would be possible for the Secretary of State for Foreign Affairs to issue to His Majesty's Consul-General at Lourenço Marques instructions similar to those proposed to be issued to the Consul at Beira, so that the Consul-General could act as a channel of communication with the Portuguese Governor-General at Lourenço Marques in regard to any matters lying outside the competence of the Beira Consulate. Any such negotiations at Lourenço Marques would, of course, be subject to the same conditions and limitations as will be applicable to negotiations conducted by the Consul at Beira. All that Huggins really wishes to secure is that there should be some one with an adequate knowledge of the Portuguese language to whom he could write in English with a view to the preliminary discussions being conducted on the spot in Portuguese. I promised to submit this request in regard to the Consulate-General at Lourenço Marques for consideration. No particular objection suggests itself to my mind, but I do not know, of course, what view the Foreign Office and the Consul-General might take.

In the meantime Huggins would be glad if the proposed instructions to the Consul at Beira could now issue.

I asked him whether he had considered the point raised by the Consul, which was mentioned in my letter but not in his reply,—namely, that at times the Beira Consulate might be in charge of a trading Consul. Huggins said that he did not regard that as likely to cause any serious difficulty. If at any time during an interregnum the subject of negotiations should happen to be such that the Government here did not wish it to pass through the hands of a Beira merchant, there would be nothing, he thought, to prevent the Government from reverting temporarily to the present method of correspondence from Governor to Governor.

We shall doubtless be advised when the proposed instructions have gone to His Majesty's Consul at Beira.

Yours, &c.,

H. J. STANLEY.

Enclosure 1 in No. 203.

(Confidential.)

MY DEAR PRIME MINISTER, Salisbury, 3rd December, 1935.

You will remember that, when you were in England in 1934, you had some conversation at the Foreign Office with Sir George Mounsey about the channels of communication between this Government and the Portuguese Administration at Beira.

Your suggestion, as I understand it, was to the effect that His Majesty's Consul at Beira should be utilized as an intermediary, and that, in lieu of the present practice under which all official correspondence passes between the two Governors, the Prime Minister of Southern Rhodesia should be at liberty to write to the Consul, who would

* No. 201. † No. 202.

then approach the Portuguese authority or authorities concerned, and that any arrangement effected in this manner should subsequently be confirmed by an exchange of notes between the Governors. (You did not, I take it, contemplate an exchange of notes which would have the force of "treaty engagements": for such engagements the channel hitherto employed—namely His Majesty's Ambassador and the Lisbon Government—would, no doubt, continue to be used?)

Sir George Mounsey appears to have expressed himself sympathetically and to have undertaken to have the suggestion investigated.

It was not, I believe, mentioned again during your visit to London this year, but Sir Edward Harding now asks me to tell you that the necessary preliminary consultations with His Majesty's Embassy at Lisbon and with the Consular Officers concerned (which have taken longer than was anticipated) have at last been completed, and that the Secretary of State for Foreign Affairs is now ready to issue the necessary instructions to His Majesty's Consul at Beira, so that he might act as a direct channel of communication between the Government of Southern Rhodesia and the Government of the Mozambique Company's territory. It is assumed that you would agree to discretion being left to the Consul to refer home any question which in his view called for prior consultation with His Majesty's Government in the United Kingdom. I gather that this is a point to which the Foreign Office attach some importance, though it is hardly to be anticipated that the necessity for such reference would often arise.

Before instructions are issued to His Majesty's Consul at Beira, however, the authorities in Downing Street would like to have your views on one or two points which have arisen in the course of the above-mentioned consultations.

In the first place, as you are aware from official correspondence, the Charter of the Mozambique Company is due to expire in five or six years (in 1941, I believe), and the Company's Territory will then, it is understood, be absorbed into the Province of Zambesia. The suggestion has been made that, as the proposed new arrangements for the utilization of the Consul at Beira as a channel of communication between the Governments at Salisbury and Beira can in these circumstances only be short-lived, it might perhaps not be thought worth while to establish them at all. That, I am assured, is advanced merely as a practical point, not as an argument against the idea, and Downing Street feels that this point is one which must be left entirely to you.

A second small point has been raised by the Consul, namely the fact that the Consulate at Beira is sometimes left in the charge of a "non-career" Consul. Mr. Ponsonby assumes, however, that the communications passing through the Consulate are not likely to be often of such a nature as to make it undesirable for a trading Consul to see them, but it is for you to say whether you would anticipate any difficulties on that score.

Will you kindly enable me to inform Sir Edward Harding of your views and wishes, so that the authorities in London may know how to proceed?

As the suggested new arrangements would necessarily effect some of the present functions of the Governor of this Colony, you will perhaps allow me to say that I have no objection to raise to them. In view, however, of the interest which any Governor takes in the external relations of his Government, I venture to express the hope that the Governor would be kept informed by being supplied with copies of any correspondence passing, as proposed, between the Prime Minister and the Consul.

Yours, &c.,

H. J. STANLEY.

The Honourable
G. Martin Huggins, M.P.

Enclosure 2 in No. 203.

Prime Minister's Office, Salisbury, Southern Rhodesia,

MY DEAR GOVERNOR, 4th December, 1935.

With reference to your letter of the 3rd December regarding communications between Southern Rhodesia and the Government of Beira, the idea was that all preliminary negotiations should be done direct through the Consul: before anything final was arranged the ordinary channels of communication to be employed.

The reason for this is best illustrated by a fairly recent agreement we made with the Mozambique Company. We wished to renew the Tete Agreement in connexion with Labour Recruiting, with certain modifications. Correspondence lasted for months owing to a difference in language and so forth. It came to a point when there was only

one clause on which we could not get any agreement. I then asked the British Vice-Consul at Beira, who was going on leave, to call at Lourenço Marques on his way home, and interview the Governor-General, and explain the matter. The matter was settled at once. Subsequently the whole agreement went through the usual channels and was confirmed.

As you are aware, we are threatened with some control of Nyasaland labour supply at the present time. I have every reason to believe if we have any difficulty about that, we can make an arrangement with the Mozambique Company to recruit in a much wider area in the Portuguese Territory. I feel quite certain if we wish to do this it will take months and months and months through the usual channels, whereas if we merely expressed our views indicating what we were wanting, to the British Consul at Beira, and then left the rest in his hands, we would probably be fixed up in a very short time.

This is only an illustration of the kind of thing I want.

The fact that the Mozambique Company may be going out of business in Portuguese East Africa in eight years is not a matter of great moment. A great deal can happen in the next eight years in this part of the world.

The Consul, of course, can refer any matter Home that he wishes, but it would probably be better if he is in doubt to refer it back; the matter can then be taken up through our Governor in the usual way.

There cannot be very many matters where this method of communication will be desirable or even necessary; for instance, there can be no question of any Treaty in connexion with Trade, as that is reserved in the Constitution, although if a Trade Agreement was considered between Southern Rhodesia and the Mozambique Territory, correspondence through the Consul would lead to some finality much quicker than the usual channel, but before anything could be done about it, it would have to pass through the usual channels.

The basic idea of my suggestion was: the Prime Minister to have direct access, with the knowledge of the Governor and His Majesty's Government in the United Kingdom, to the Consul at Beira, with a view to the two Governments understanding one another, and to conduct all preliminary negotiations.

As far as the last paragraph of your letter is concerned, you would naturally be informed of anything that is going on, and, further, nothing could be brought to finality without your intervention.

I hope this will satisfy Sir Edward Harding, and that this channel of communication may be recognized purely for the purpose of negotiations.

Yours, &c.,

G. MARTIN HUGGINS.

His Excellency
Sir Herbert Stanley, G.C.M.G.

11481/143. No. 204.

SIR EDWARD HARDING (DOMINIONS OFFICE)

to

SIR HERBERT STANLEY (GOVERNOR, SOUTHERN RHODESIA).

MY DEAR STANLEY, Downing Street, S.W.1, 4th February, 1936.

In reply to your letter of the 6th December* regarding channels of communication between Southern Rhodesia and Portuguese East Africa, I enclose a copy of a despatch to His Majesty's Consul at Beira, from which you will see that the proposed instructions to the Consul have now been issued.

As regards the question whether similar instructions could be issued to the Consul-General at Lourenço Marques, so that he could act as a channel of communication with the Portuguese Governor-General at Lourenço Marques, the position is that, as you will have seen from the Secretary of State's confidential despatch No. 397 of the 11th December†, the Beira consular district now includes the Tete district, which is outside the Mozambique Company's territory and consequently under the control of the Governor-General at Lourenço Marques. In these circumstances, though minor questions in the Tete district could no doubt be taken up by the Beira consul with the local Portuguese administrative authorities, major questions would presumably have to be

* No. 203. † 11481/141: not printed.

taken up with the Governor-General at Lourenço Marques. That being the case, the Foreign Office are disposed to agree that the institution of an arrangement between Salisbury and Lourenço Marques similar to the arrangement between Salisbury and Beira would be both necessary and advantageous. They are consulting the Embassy at Lisbon and the consular officers concerned on this question, and we will communicate with you further on the matter in due course.

Yours, &c.,

E. J. HARDING.

Enclosure in No. 204.

(No. 3.)

SIR, Foreign Office, S.W.1, 22nd January, 1936.

With reference to Sir John Simon's despatch No. 383 of the 22nd December, 1934, to His Majesty's Ambassador at Lisbon (a copy of which was sent to you under cover of Foreign Office despatch No. 85 of the 29th December, 1934), and to your despatch No. 3 of the 20th April last to His Excellency (of which a copy was sent to the Foreign Office under cover of Beira despatch No. 15 of the 22nd April, 1935), I am directed by Mr. Secretary Eden to inform you that he has considered, in consultation with His Majesty's Embassy and the Dominions Office, your observations on the suggestion of the Prime Minister of Southern Rhodesia that His Majesty's Consul at Beira should become the normal channel of communication between the Government of Southern Rhodesia and the Government of the Mozambique Company's territory. In the course of this consultation Sir Charles Wingfield's predecessor signified his concurrence in the Southern Rhodesian Prime Minister's suggestion, and Mr. Huggins expressed the wish that, notwithstanding the relatively short space of time which the Company's Charter had to run, his suggestion might be given effect to forthwith.

2. I am accordingly to state that you are hereby authorized to communicate, at the direct request of the Southern Rhodesian Government, with the Government of the Mozambique Company's territory in regard to matters requiring discussion between those two Governments, on the understanding that you will, at your discretion, refer to the Secretary of State for Foreign Affairs any question which, in your opinion, calls for prior consultation with His Majesty's Government in the United Kingdom.

3. A copy of this despatch is being sent to His Majesty's Ambassador at Lisbon under cover of a despatch of which a copy is enclosed herein, and a copy is also being sent to His Majesty's Consul-General at Lourenço Marques under despatch No. 6 of the 22nd January.

I am, &c.,

H. J. SEYMOUR.

A. G. Ponsonby, Esq.,
His Majesty's Consul,
Beira.

NATIVE AFFAIRS

(1) Franchise

10865/27. No. 205.

MEMORANDUM DATED 10TH JULY, 1934, ADDRESSED TO THE UNDER-SECRETARY OF STATE FOR DOMINION AFFAIRS BY MR. G. M. HUGGINS (PRIME MINISTER, SOUTHERN RHODESIA).

Memorandum for discussion on Native Franchise, Southern Rhodesia.

At the present time there are some forty natives on the Electoral Roll. It is not proposed to interfere with them: they can remain on: but it is the future policy which has to be considered.

This is a matter on which all the political parties in Southern Rhodesia are agreed. Further, it must be realized that at the present time, for all intents and purposes, the natives are not represented in Parliament directly but only through the Minister of Native Affairs, who has so far been also the Prime Minister.

Owing to the abolition of the education test in the qualification for becoming a Parliamentary voter, it is very easy for anyone to get on the Voters' Roll: there is a sm ll property qualification, and the passing of the Land Apportionment Act, which has definitely encouraged natives to acquire property of their own, has made the consideration of the native franchise a matter of urgency.

It is of the utmost importance that Europeans should take a sympathetic and helpful view of native development, and this it not likely to happen if there is in any way a fear of political power being exercised by the natives. Experience in the Southern States of the United States of America, which is supposed to be a land of equality, and incidentally of assimilation, has shown that although the negro has a vote on equal terms and conditions, in practice his vote is either bought, or he is intimidated. We in Southern Rhodesia are very anxious to avoid this state of affairs. It is proposed that no more natives be placed on the Voters' Roll, but that some other and more suitable method be devised for representation in Parliament. Until a second Chamber is created, representation will be in the present Legislative Assembly, although as long as the Native Reservation remains in the Constitution it is not actually necessary for any direct native representation in Parliament.

I have no definite plan to propose, but I would throw out the suggestion that a panel of three or four suitable men could be nominated by the Governor, from whom the natives might choose two by means of voting yet to be ascertained. A large majority of natives are quite incapable of understanding the ordinary system of voting. The two men to be elected will have to remain strictly detached from all political parties: in addition, I suggest that they be elected for a term of years, and do not necessarily come up for election at any General Election, making them still further apart from ordinary party government.

In addition, it should be understood that they are not eligible for ministerial office, otherwise they would again become party men.

It is not desirable that native representatives should be nominated entirely to an elected assembly, and that is why I suggest that some method be devised for ascertaining the natives' choice from out of two or three candidates, thus introducing a modified form of election.

If any other practical suggestion for native representation can be brought forward, I would like to discuss it before I leave London.

On the general question I cannot stress this matter too much: it is one on which the Colonists have most definite views, and some way out of the difficulty must be found. At the present time there are very few natives on the Voters' Roll, and as I propose they should be left, they will not be disturbed. The only people who would be likely to object are possibly those people who always consider that the Colonists are out to exploit the natives on every occasion, although in practice they have no evidence to prove this, nor do they know anything about the subject they pretend to be an authority on.

Native Boards are being established, and these will lead up to Native Councils in due course. It is from these bodies, through the Native Affairs Department, that the Government of the day will be guided in matters affecting the native, and native policy in general.

I visualize that the representatives of the natives in Parliament will eventually be elected by the Native Councils when they have advanced sufficiently to understand what they are doing, and understand our political machine.

Office of the High Commissioner for Southern Rhodesia,
London, W.C.2, 10th July, 1934.

10865/27.

No. 206.

SIR EDWARD HARDING (DOMINIONS OFFICE)

to

MR. G. M. HUGGINS (PRIME MINISTER, SOUTHERN RHODESIA).

(Confidential.)

DEAR MR. HUGGINS, Downing Street, 27th July, 1934.

As promised at our discussion on the 23rd July on the question of the Southern Rhodesia native franchise, I enclose herewith:—

(*a*) copies of the two memoranda* relating to native representation in the Colonial legislatures and Maori representation in New Zealand, which were sent to Mr. Moffat when he discussed the question with us here in 1932;

(*b*) a copy of the Parliamentary Paper Cmd. 4147 as to communal representation in India, which was handed to Mr. Moffat during the discussions;

(*c*) a copy of the letter† subsequently sent to Sir C. Rodwell (with enclosures).

You will recollect that it was suggested that you might like to re-examine the question of the native franchise in Southern Rhodesia in the light of the information contained in these notes, etc.

Yours, &c.,
E. J. HARDING.

10865/29.

No. 207.

SIR EDWARD HARDING (DOMINIONS OFFICE)

to

SIR HERBERT STANLEY (HIGH COMMISSIONER, SOUTH AFRICA).

(Confidential.)

MY DEAR STANLEY, Downing Street, 22nd August, 1934.

I enclose a copy of a memorandum on the native franchise in Southern Rhodesia which was sent me by Mr. Huggins on the 10th July‡, and which you may be interested to see. It was prepared by Colonel Carbutt, the Chief Native Commissioner. I also enclose notes of two subsequent discussions with Mr. Huggins on the 16th§ and 23rd July‖ on the native franchise question, and native policy generally, at which Sir John Maffey and other representatives of the Colonial Office were present.

You will already have received in my letter of 15th August¶ that part of the note of the discussion on the 23rd July which deals with the Southern Rhodesia Land Apportionment Act.

In accordance with the arrangement made at the discussion on the 23rd July, I sent to Mr. Huggins on the 27th July the letter** of which I also enclose a copy. (He did not reply to this before leaving this country.)

The present position is that arrangements will be made here for a further discussion with the Colonial Office of the principles involved. I will keep you informed of the position.

Copies of the enclosures to this letter have also been sent to Russell.

Yours, &c.,
E. J. HARDING.

10865/28.

No. 208.

MEMORANDUM BY MR. C. L. CARBUTT, CHIEF NATIVE COMMISSIONER, SOUTHERN RHODESIA.

(Received 11th September, 1934.)

NATIVE PROBLEM.

I should like to preface the suggestions I am about to make by a brief account of what we are doing in Southern Rhodesia for the betterment of the native races to enable them to meet the changed conditions of life incidental to the occupation of their country

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* 10865/10: not printed. † 10865/13: not printed. ‡ No. 205.
§ 10869/29: not printed. ‖ 10869/29: not printed. ¶ No. 197. ** No. 206.

by a civilized race, because otherwise it may be thought that my proposals connote a policy of despair and that we are making no attempt to fit the natives for life under existing conditions.

As in other African states in which the settlement of Europeans has been encouraged; it was early recognized that in the scramble for the acquisition of land, the backward native race would suffer unless steps were taken to safeguard their interests and set aside land for their sole use.

Accordingly it was decreed by Article 81 of the Southern Rhodesia Order in Council of 1898 that " the British South Africa Company shall from time to time assign to the natives inhabiting Southern Rhodesia land sufficient for their occupation, whether as tribes or portion of tribes, and suitable for their agricultural and pastoral requirements, including in all cases a fair and equitable portion of springs and permanent water ". In accordance with these requirements the British South Africa Company from time to time declared certain areas to be Native Reserves, for the sole and exclusive communal use of the natives.

However, the matter continued to be in a somewhat unsatisfactory state, and on the 5th May, 1914, His Majesty's High Commissioner for South Africa appointed a Commission, under the Chairmanship of the late Sir Robert Coryndon, to examine the Native Reserves having special regard to the sufficiency of land and water, and bearing in mind not only the present but probable future requirements of the natives, consequent on the spread of white settlement and the natural growth of the native population. This Commission submitted a report in due course, as a result of which an Order in Council was published on the 24th December, 1920, in which the Native Reserves as they exist to-day are defined. Their total area is 21,594,957 acres, comprising 83 Reserves of varying sizes, scattered all over the Colony and inhabited by some 675,499 natives. In view of later remarks, it is of some importance to remember this. In addition to the natives within the Reserves, there are some 375,000 living outside on Crown land and on European-owned land.

In 1923 Southern Rhodesia attained the status of a self-governing Colony, and was granted a Constitution under which, *inter alia*, Europeans and natives had the right to acquire individual ownership in land in any part of the Colony, except in the Native Reserves, the constitution of which I have already described.

At the time of the grant of responsible Government a few natives had availed themselves of this right to acquire land, but because of their backwardness and different standard of living it was felt that the indiscriminate settlement of natives amongst Europeans was not in the interests of either race, and would lead to friction; so in January, 1925 a Commission presided over by Sir Morris Carter was appointed to enquire into, and report upon, the expediency and practicability of setting aside defined areas outside the Natives Reserves, within which

(*a*) natives only would be permitted to acquire ownership or an interest in land, and
(*b*) Europeans only should be permitted to acquire similar rights.

After an exhaustive inquiry this Commission duly submitted its report, as a result of which the Land Apportionment Act was promulgated in October, 1930, giving effect to the findings of the Commission. In terms of this Act the natives surrendered their right to acquire individual ownership to land in any part of the Colony, in return for the exclusive right to acquire individual farms or holdings anywhere within 81 different areas, scattered all over the Colony, and in most cases adjoining the Native Reserves, and containing a total area of 7,464,566 acres. These areas are defined in a Schedule to the Land Apportionment Act, and may be added to from an undetermined area, comprising a further 88,540 acres, or from an unassigned area, comprising a further 17 million odd acres. It will thus be seen that the natives of Southern Rhodesia have had assigned to them for their exclusive use, either under communal or individual tenure, close on 30,000,000 acres of land, and may acquire further rights in the 18,000,000 odd acres contained in the undetermined and unassigned areas, a by no means ungenerous provision.

Notwithstanding the above-mentioned liberal provision of land, it will be evident from the fact that the native population is now confined, in its use of land, within defined boundaries that a far reaching and radical change in their social organization has taken place with the advent of the white man, and that an adjustment in the agricultural and pastoral systems, hitherto practised by the natives is essential, if the land assigned for their use is to prove adequate to their needs. Under their own system of agriculture, lacking adequate fertilization of the soil, frequent changes of cultivated land were necessary, and their stock could be moved to fresh pastures whenever the need arose. They can no longer follow these methods, and already there are signs of congestion and overstocking in certain areas where the natives have been left to follow their own time-honoured agricultural methods. The need for an

alteration in native methods has been amply demonstrated in the Union, and in such Protectorates as Basutoland, where very fertile areas have been reduced to so low a state of productivity that the population has great difficulty in maintaining itself. Recognizing these facts the Government of Southern Rhodesia has taken steps to prevent, as far as possible, their occurrence within the Colony. We have established two schools for natives, at which agricultural demonstrators are trained. When these men have completed their training they are drafted to the administrative branch of the Native Affairs Department, in which, under the supervision of District Officials, guided by two agricultural experts they demonstrate crop rotation and other improved methods of agriculture in the Native Reserves and on individually-owned farms. The progress made in this work is shown by the fact that in 1927, when it was commenced, there were 88 demonstration plots, while in 1933 they had increased to 1,338. The benefit to be derived from following improved methods is shown by the fact that in 1933 the average yield of grain per bag of 200 lb. on demonstration plots was 7·9 bags per acre, whereas on land cultivated in accordance with native methods the yield was under one bag to the acre. The 1933 season was an unusually dry one, but in 1932, which was a year of more normal rainfall, the relative figures were 13·6 bags and 1·1 bags. It will be obvious from the above figures that the carrying capacity of the land set aside for native use will be greatly increased, if we can induce a large proportion of the population to adopt improved methods. That there is good ground for anticipating that this ideal will be attained is indicated by the fact that whereas in 1927 no natives co-operated in the demonstrations, co-operators had increased to 789 in 1932, and in 1933 the number jumped to 2,788.

In addition to this, the Native Affairs Department, with the assistance of the Irrigation Department, has undertaken a comprehensive scheme for the development and conservation of water supplies, in the more arid areas, which were rendered uninhabitable by lack of water. In pursuance of this policy some hundreds of bore-holes have been drilled, and equipped with windmills, or other suitable pumping machinery, water storage tanks, and drinking troughs for stock. In suitable places concrete weirs have been built across dry water courses, and hold up large volumes of storm water. Our efforts to improve the conditions under which the natives live do not stop here. Hospitals and dressing stations for natives have been established in many places, and their education is provided for by means of subsidies to Missionary Societies.

While the measures described above indicate the goodwill of the Government of Southern Rhodesia towards the dependent race, and may for the time being meet the needs due to the change in the economic organization of native society, consequent upon the advent of the white man, we realize that far more will have to be done, if a lasting and satisfactory *modus vivendi* is to be found for black and white in the sub-continent of South Africa, for the developments described above by no means cover the whole of the social and economic contacts of the two races.

Owing to the numerical superiority of the black race, there is no doubt that the whites fear their ultimate political domination, because of their lower standard of living and their rivalry in the economic field, if they are given free scope to develop to their full capacity. Because of this it is certain that while human nature remains what it is, it will not be possible in colonies or dominions in which white men have settled in large numbers to give the natives that full measure of freedom for self-development which prevails in Protectorates.

To say that the white man will never submit to political domination by the black man, is in Southern Rhodesia an undeniable truism. It follows that no matter to what heights of civilization the native attains the white man will not admit him in large numbers to political equality.

In the economic field the same principles prevail. If the black man is given full scope to develop his capabilities there is no doubt that he will not remain a mere unskilled worker. In his recently published book *The Africa To-day*, Professor Westerman, quoting from a report on the mining industry in South Africa refers to " the natives' almost phenomenal advance in efficiency during recent years," and states that " if this development were allowed to continue unhampered the result would be the elimination of the European worker from the entire range of mining operations." He goes on to say that this apprehension led to the promulgation of a law according to which only whites and certain coloured people were allowed employment in a number of stated occupations. That this fear of the competition of the black man in skilled trades is not groundless is shown by the progress made by natives in skilled trades in Southern Rhodesia, within the short life of that Colony. Last year

there were no less than 359 native builders in the Colony, 75 brick-makers, 40 black-smiths, 217 carpenters, 85 painters, 55 plumbers, 158 tailors, 72 well sinkers, and many other skilled tradesmen.

It would be idle to suppose that the African will be satisfied to confine himself to an invasion of the skilled trades. Already there are numerous signs that the professions are not beyond his capacity, for we have native doctors, lawyers, teachers, etc., in small but increasing numbers. This being so, it is obvious that in colonies and dominions in which white settlement has been encouraged and has taken place, and in which the white man has acquired a stake, he will take measures to protect himself against domination by the black man, either political or economic. What form such protective measures are likely to take can only be surmised from occurrences in the Union of South Africa.

No fair-minded person favours the repression of the black man, but on the other hand the white man has been encouraged to settle and acquire interests in the black man's country, and where this has taken place the white man is also entitled to consideration.

No doubt when colonization was first encouraged, the problems to which it would give rise were not fully foreseen. But the colonization having taken place, and the difficulties described above having arisen, it is the duty of those who encouraged colonization, including His Majesty's Government, as well as of the colonists, to find the most equitable way out of the difficulties.

In Southern Rhodesia an attempt has been made by the colonists to overcome the difficulties, which it was obvious from experience in the Union of South Africa would overtake them, unless steps were taken to provide conditions more acceptable to both races. This attempt took the form of a limited territorial segregation of the two races.

Earlier in this paper I drew attention to the large number of native areas, scattered all over Southern Rhodesia, amongst the European areas. It is because of this that Rhodesia's effort is, in my opinion, doomed to failure. It is impossible to apply a practical scheme of political or economic development to so scattered a community, which will not come into conflict with European interests, and so force Government, however much against their inclination, to introduce measures for the protection of the white community, which will be distasteful to the natives, if not antagonistic to their interests. It would, for example, be inconvenient, if not impossible, to have two Parliaments, one a white one for the white area, and the other a black one for the black area, legislating independently of each other while, as indicated above, a joint or mixed Parliament would not be acceptable to the white race; likewise it is not possible to develop the economic productivity of the Native Areas without bringing them into competition with economic conditions in the white area, and so producing friction between the two races.

How then are these difficulties to be overcome. In my opinion, only by reproducing as far as possible those conditions which prevail in the native protectorates under the Crown. It is fortunately still possible to do this in the Rhodesiaa. I would suggest the amalgamation of Southern and Northern Rhodesia, on condition that native interests be declared and remain permanently paramount in Northern Rhodesia, exclusive of a strip along the railway line and of the copper belt, in which, unfortunately, Europeans have acquired such large interests that they could not be expropriated reasonably, while in Southern Rhodesia European interests would be paramount and the first consideration. Such an arrangement would provide for the future rather than or any immediate pressing needs. There would be no need to move the native population from Southern Rhodesia immediately, or even within any given number of years, but white development in Southern Rhodesia would be freed of the embarrassing necessity to consider native interests, because those natives who did not like the conditions in Southern Rhodesia would be free to move to Northern Rhodesia, where their development would likewise be unhampered by any need to consider its repercussions on European interests.

No doubt I shall be asked if such an arrangement would be acceptable to the natives. If movement is not forced on them immediately, but allowed to take place in a natural way, to enable them to escape from conditions which will be distasteful to them, I do not doubt that they would welcome it. Experts will tell us that natives have a deep attachment to their ancestral lands. That is true, but the attachment is not an insuperable one. Africa from time immemorial has been a land of native migrations, and the migration now contemplated would merely be one more, and possibly the last of many for the tribes affected. Other signs that natives would gladly accept the offer of land in which

the white man has no interest but their welfare, are not wanting. Because of our Land Apportionment Act we in Southern Rhodesia get many applications from natives in the Union, not only as individuals, but in one case from a Chief on behalf of his tribe, for permission to acquire land in Southern Rhodesia; so an extension of the suggestions I have outlined above, permitting the formation of a great central African native state, embracing possibly Northern Rhodesia, Nyasaland, Tanganyika, and Uganda, might be the solution not only of the native problem in Southern Rhodesia, but in the Union as well. The sound and permanent solution of this great racial problem is of the utmost importance to the British Commonwealth of Nations. It can be accomplished now, but in a few years when the empty spaces of Africa have been acquired and settled by Europeans it will be too late to do anything really and permanently effective. However, to return to the problem as it affects Southern and Northern Rhodesia, it appears that there is ample land in the latter territory for the accommodation of the natives of Southern Rhodesia. The latter Colony has an area of some 150,000 square miles, with a population of 1,055,000 natives. Half the Colony is in the hands of Europeans, while Northern Rhodesia has an area of 287,000 square miles, with a population of 1,382,705 natives, and with few vested European interests outside the copper belt and along the single line of railway. No doubt there would be other interests to be considered before the proposals outlined above could be adopted, but great sacrifices will be necessary and worth while to attain a solution of the greatest problem which confronts South Africa.

C. L. CARBUTT.

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(2) Recruitment of Native Labour—Provisional Agreement with Northern Rhodesia and Nyasaland

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11087/28. No. 209.

SIR HERBERT STANLEY (GOVERNOR, SOUTHERN RHODESIA)

to

SIR EDWARD HARDING (DOMINIONS OFFICE).

(Received 16th September, 1936.)

(Confidential.)

MY DEAR HARDING, Salisbury, 3rd September, 1936.

With reference to the message from you transmitted in the Secretary of State's confidential telegram No. 73 of the 11th August*, you may like to have a copy of the provisional agreement which was effected at the recent conference here with the Governors of Northern Rhodesia and Nyasaland. It is provisional in the sense that, so far as the two Northern Territories are concerned, it is subject to the sanction of the Secretary of State for the Colonies.

I hope shortly to be able to forward a record of all the proceedings of the conference.

Yours, &c.,

H. J. STANLEY.

Enclosure in No. 209.

MIGRANT NATIVE LABOUR.

Provisional Agreement between the Governments of Southern Rhodesia, Northern Rhodesia and Nyasaland.

1. With a view to regulating the movements of migrant Native labour the Governments of Southern Rhodesia, Northern Rhodesia and Nyasaland agree that, *inter se* and in respect of any other territories with which satisfactory reciprocal arrangements can be made, they will issue certificates to male Natives in a form adequate for

* 11087/25: not printed.

identification purposes. Those Natives leaving their home Territories in search of employment will be furnished with evidence to that effect, and also, so far as practicable, with an endorsement showing that they left their Territory physically fitted to work.

(In view of the need for safeguards against a practice prevalent in clandestine emigration, it is hoped that the Governments of other Territories may introduce a similar system).

2. Each Government will agree to the admission only of such free labour from the Territory of any other Government which is or may become a party to this agreement as has been furnished with identity certificates when that provision can be safely implemented without upsetting the Natives and handicapping industries. It is agreed that adequate warning of the pending change shall be given to the Natives concerned; the system to become fully operative from a date or dates to be mutually agreed upon, provided, however, that such preliminary action as may be found possible shall not be deemed to be precluded.

3. The Governments agree and will implement so far as possible the principle that the labour requirements of the three Territories shall have the first call upon their available supplies of labour, subject to labour conditions generally being satisfactory, and to any necessary legislation being enacted to this end; and further agree that, subject to the fulfilment of any existing obligations, any proposal for the recruitment or organized engagement of labour for employment in any other Territory shall form the subject of prior consultation *inter se*.

4. The Governments agree to take the necessary action to ascertain the amount of labour available for wage-earning employment. Each Government will furnish an annual statement of the labour situation within its Territory to the other Governments.

5. The Governments consider that inter-State arrangements between the three Territories for regulating and, if necessary, restricting the flow of labour should not be precluded, if, as seems probable, it is found that the interests of the Natives demand it.

6. The Governments agree that it is desirable that emigrant Natives in general should return to their homes after working for an economic period which should not exceed two years and might well be less, and that after two years they should be repatriated, exceptions to this rule being allowed on reference to the Labour Commissioner of the labourers' country of origin.

7. It is agreed that, in the event of unemployment, immigrant labourers should be housed and fed in camps until such times as they can be found employment or repatriated.

8. The Governments agree to the provision of rest camps, food depots and dispensaries at such points on all main labour routes as shall be mutually agreed upon.

9. The Governments agree to establish and maintain control over transport of migrant labourers. It is agreed that it is desirable that rapid and cheap transport should be provided for movements of labourers within the three Territories.

10. The Governments recognize the necessity of a fair proportion of the migrant labourer's wages returning to his home. The Government of Southern Rhodesia agrees to institute a voluntary remittance system which will further the same purposes as systems of compulsory deferred pay and family remittances. For this purpose as well as for assisting and safeguarding Northern Natives in other ways the Government of Southern Rhodesia will employ seven itinerant officials. If, however, after a period of two years this voluntary system prove inefficacious the position will be reconsidered.

11. The Governments agree that it is generally better to pay compensation monies for accidents to the injured man rather than to remit them to his country of origin.

12. The Governments agree that the estates of deceased Natives should as a rule be sent to the deceased's country of origin.

13. The Governments agree to set up a Standing Committee composed of representatives of the three Governments to secure co-ordination of labour policy and to consider and report upon problems affecting labour as they arise. It is further agreed that the Governments of Northern Rhodesia and Nyasaland shall each appoint an official to be permanently resident in Southern Rhodesia as a Labour Commissioner.

14. The Governments agree that subject to the above-mentioned conditions recruitment of Natives in Northern Rhodesia and Nyasaland for work in Southern Rhodesia is not essential.

15. The Governments agree that from every tax collected by any of the three Governments from a Native of either of the two other Governments the amount of the

basic tax payable by a Native resident in his own Territory or such lesser amount as may have been collected shall be remitted to the Government of the Territory concerned. This arrangement shall take effect from a date or dates to be mutually agreed upon. It is further agreed that the Government of Southern Rhodesia will endeavour to collect on behalf of the Government concerned any Native tax due by a Native to his own Government during the period of twelve months in which he is not liable for Southern Rhodesia tax.

16. This agreement shall remain in force for four years from the date of signature and shall thereafter be determinable as between any of the contracting parties upon twelve months' notice.

Dated at Salisbury this twenty-first day of August nineteen hundred and thirty-six.

(Sgd.) HAROLD B. KITTERMASTER (Subject to the sanction of the Secretary of State).
(Sgd.) HUBERT YOUNG (Subject to the sanction of the Secretary of State).
(Sgd.) G. MARTIN HUGGINS.

(Sgd.) H. J. STANLEY,
Chairman.

11087/29.

No. 210.

SIR HERBERT STANLEY (GOVERNOR, SOUTHERN RHODESIA)

to

SIR EDWARD HARDING (DOMINIONS OFFICE).

(Received 2nd October, 1936.)

(Confidential.)

Salisbury, Southern Rhodesia,
21st September, 1936.

MY DEAR HARDING,

Under cover of my confidential letter of the 3rd September* I sent you a copy of the " provisional " agreement about migrant native labour which was effected at the last inter-territorial conference here.

The record of the proceedings of the conference and the annexures thereto are now being manifolded. I will forward a copy as soon as it becomes available. A shorthand note was not taken, and the record is merely a brief summary of what took place; it had to be agreed to by all parties before I could authorize its reproduction. Hence the delay. The enclosed extract is the portion dealing with the discussion of the question of migrant native labour.

We felt it to be desirable that the co-operation of the Union Government should be sought, and I, as Chairman, was asked to approach that Government, through the Governor-General, with a request for an opportunity for a talk during our forthcoming visit to Johannesburg.

General Hertzog arranged for us to meet Mr. Duncan, Minister of Mines and, during Mr. Hofmeyer's absence in India, Acting Minister of the Interior (and, as such, in charge of the Immigration Department).

Mr. Duncan received us—viz., Sir H. Young, Mr. Huggins and myself—in his office at Pretoria on the 11th September. Sir H. Kittermaster, who had been unwell, had not yet arrived at Johannesburg, and we were still uncertain as to his movements. He actually arrived on the 12th.

Mr. Duncan told us that it was the intention of his Government to pass legislation at the next session of the Union Parliament for the withdrawal of the ban on the admission of natives from North of latitude 22° South, provided that they were introduced for work on the Rand mines under a scheme of recruitment, etc., approved by the Minister.

We explained our difficulties and anxieties, and asked whether it would not be possible to regulate the matter by inter-Governmental agreement, on the analogy of the Union-Mozambique Convention. He said that he would prefer not to adopt procedure which would entail submission to the Union Parliament, and we could not move him further than to hold out to us a prospect of an undertaking that before approving a scheme submitted by the Chamber of Mines he would give the Government or

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* No. 209.

Governments affected an opportunity of expressing their views upon it. He urged us to have a discussion with the Gold Producers' Committee of the Chamber of Mines and to see whether we could not come to a mutually satisfactory arrangement with them, and he offered to receive us again after that discussion had taken place.

We (including Sir H. Kittermaster) met the President, the two Vice-Presidents and the General Manager of the Chamber of Mines on the 14th September.

We submitted three points:—

(1) that the preservation of the social structure of native life must be the first requirement;

(2) that thereafter the reasonable needs of our own group of Territories should have a prior claim on any available surplus;

(3) that the Rand mines should only be entitled to draw upon any further surplus remaining over after the first two requirements had been met, but that the amount of such further surplus, if any, was still uncertain and could not be ascertained until the investigations which were to be undertaken during the coming twelve months or so had been completed.

We explained the nature of the agreement arrived at between ourselves at our Salisbury conference, mentioning, of course, that it was subject to ratification by the Secretary of State for the Colonies so far as Northern Rhodesia and Nyasaland were concerned.

While not disputing the reasonableness of our contentions, the representatives of the Chamber made it clear that their necessities were such as to preclude (if recruitment were prohibited) their complete abstention for twelve months from the engagement of Northern Rhodesia and Nyasaland labour offering itself voluntarily, and suggested that in that way they would actually secure a larger, though perhaps less satisfactory, supply than by the recruitment of a number limited by agreement, and subject to the conditions of repatriation, deferred pay, etc., which would be applicable to recruited labour.

They asked whether Southern Rhodesia would object to the recruitment of labour in Barotseland, where Sir Hubert Young said there was a surplus which he would be glad to see employed on the Rand mines if the Secretary of State did not interpose a prohibition. As very few Barotse come to Southern Rhodesia, Mr. Huggins finally said that he would waive any objection on the part of this Colony to the recruitment of up to 10,000 Barotse annually for the Rand mines, if the Chamber would refrain from engaging any Nyasa boys during the twelve months or so while investigations as to the available surplus were proceeding. The Chamber was not prepared to accept this latter proviso absolutely, and in the end a compromise was reached to the effect that Southern Rhodesia would not object to the extension for one further year of the arrangement under which the Chamber had been empowered to recruit up to 2,000 Nyasa boys in 1936, viz., that they should be allowed to recruit another 2,000 Nyasa boys in 1937. The whole question would be reopened and re-considered when the facts as to the available surplus had been ascertained.

The agreement was reduced to writing and initialled by all parties. I enclose a copy. You will observe that the provisions as to both the recruitment of up to 10,000 Barotse per annum, and the recruitment of 2,000 Nyasa boys in 1937 are expressed as subject to the approval of the Secretary of State for the Colonies.

We met Mr. Duncan again on the following day, the representatives of the Chamber also being present, and reported progress.

Mr. Duncan thought the agreement very reasonable. We pointed out that it was based on the assumption that the admission of natives from our group of Territories into the Union would be confined to those to be recruited under the present or any future agreement with the Chamber of Mines, and that the Union Government would take steps to prevent the illicit immigration of such natives as under the proposed new legislation would still be prohibited immigrants, since otherwise the whole basis of the arrangement might well be stultified.

Mr. Duncan said that the prevention of illicit immigration was a matter of almost insuperable difficulty, and that the repatriation of illicit immigrants, even apart from considerations of expense, would involve political trouble from their employers. He expressed himself willing, however, to look into the matter further, if we would write to him when the Salisbury agreement between ourselves and the Johannesburg agreement with the Chamber of Mines had become operative by the signification of the Secretary of State's sanction, and if we would then communicate those documents

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to him. The question of an undertaking by him binding the Minister not to approve of a recruiting scheme affecting our Territories without affording the Government or Governments concerned an opportunity to express their views thereon could be dealt with at the same time.

It was agreed that any correspondence should be conducted with our group of three Territories collectively through my office.

As it will not be possible to prevent natives from our Territories making their way into the Union unless the Union Government co-operates with us, and as such co-operation can only be hoped for if reasonable opportunities for the enlistment of the ascertained surplus are afforded to the gold mines, and as, if such enlistment is to take place, it will be desirable that its numbers and the conditions of employment should be regulated by agreement, I hope that the Secretary of State for the Colonies will allow the arrangements now provisionally agreed upon to proceed.

It may interest you to see the attached copy of a letter from Mr. Gemmill to Sir Hubert Young*, showing the mortality among tropical natives since the beginning of their experimental employment in January, 1934.

Yours, &c.,

H. J. STANLEY.

P.S.—I have shown this letter to my Prime Minister, who authorizes me to say that it has his concurrence.

H. H. S.

Enclosure 1 in No. 210.

MIGRANT NATIVE LABOUR.

(Extract.)

(*Note.*—During the discussions on migrant native labour MR. C. BULLOCK (*Southern Rhodesia*), MR. T. E. SANDFORD, C.M.G. (*Northern Rhodesia*) and MR. A. T. LACEY, O.B.E. (*Nyasaland*) were present).

Sir Hubert Young read a telegram addressed to himself and to Sir Harold Kittermaster by the Secretary of State for the Colonies on the subjects of the recruitment, in their Territories, of native labour for employment on the Witwatersrand, and of the agreement initialled by the three Governors and the Prime Minister of Southern Rhodesia on the 16th May.

A long discussion followed, and it was finally agreed that a committee of the three advisers present should be formed to consider the whole question of migrant native labour as it affected the three Territories and to submit a short report.

The Conference adjourned at 5.30 p.m. on the 17th August.

When discussions on migrant native labour were resumed on the 20th, the Committee of Advisers, formed at the conclusion of the previous discussions, presented their report, which was read by the Chairman, who thanked the Committee on behalf of the Conference.

The Committee's report was then discussed, and after some minor amendments had been made with the Committee's concurrence, it was adopted by the Conference.

After further discussion, the Committee was requested to redraft the initialled agreement of the 16th May in conformity with the Secretary of State's telegram (Appendix A) and with the Committee's report. The Committee was requested, also, to advise as to the best method of approaching the Union Government as recommended in paragraph 5 of the report.

On the 21st August the Committee presented a redraft of the initialled agreement and two draft recommendations as to the method to be adopted in approaching the Union Government.

The redraft of the agreement was considered by the Conference, clause by clause. When several amendments had been made it was decided to adopt the draft as amended, and it was initialled by the members of the Conference. It was arranged that a clear copy of the amended draft should be signed subsequently by the Governors and by the Prime Minister, it being understood that the signatures of the Governors of Northern Rhodesia and Nyasaland would be shown as subject to the sanction of the Secretary of State for the Colonies.

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* Not printed.

With regard to the method to be adopted in approaching the Union Government, after some discussion, in which the Chairman suggested that it might be more desirable to conduct negotiations in writing, it was agreed that Sir Herbert Stanley would write informally to the Governor-General to ask him to mention to his Ministers that the three Governors and the Prime Minister, who would all be present at the Transport Conference, would welcome an opportunity of discussing migrant labour with them and that they would be glad if such a discussion could be arranged.

Enclosure 2 in No. 210.

TROPICAL LABOUR.

(Confidential.)

NOTE OF AGREEMENT ARRIVED AT AT A MEETING BETWEEN REPRESENTATIVES OF THE GOVERNMENTS OF SOUTHERN RHODESIA, NORTHERN RHODESIA AND NYASALAND, AND REPRESENTATIVES OF THE TRANSVAAL CHAMBER OF MINES, HELD IN THE CHAMBER OF MINES BUILDING ON MONDAY, 14TH SEPTEMBER, 1936, AT 3.30 P.M.

Present:

Representing Southern Rhodesia:
SIR HERBERT STANLEY, *Governor*,
DR. G. M. HUGGINS, *Prime Minister*.

Representing Northern Rhodesia:
SIR HUBERT YOUNG, *Governor*.

Representing Nyasaland:
SIR HAROLD B. KITTERMASTER, *Governor*.

Representing the Transvaal Chamber of Mines:
MR. G. H. BEATTY (*President of the Transvaal Chamber of Mines*),
MESSRS. P. M. ANDERSON and W. A. MACKENZIE (*Vice-Presidents*),
MR. W. GEMMILL (*General Manager*).

IT WAS AGREED—

(1) That, subject to the approval of the Secretary of State for the Colonies and to the successful conclusion of the experimental employment of 1,000 natives from Barotseland on the Witwatersrand Gold Mines, the Gold Mines be permitted to recruit in Barotseland a maximum of 10,000 natives per annum.

(2) That, subject to like approval, during the year 1937 the Gold Mines be permitted to recruit in Nyasaland 2,000 natives, making the total to be recruited in 1936 and 1937 4,000 in all.

(3) That, on the completion of the investigation at present being made by the three Territories into the native labour available in Northern Rhodesia and Nyasaland after allowing for the requirements of Southern Rhodesia from these Territories, the results of which investigation will be available within twelve months, a further meeting between the parties shall take place forthwith.

(4) That, until 1st January, 1938, pending the meeting referred to in Clause (3) above, no steps be taken by the Witwatersrand Gold Mining Industry to encourage the flow of voluntary labour from any of the three Territories to the Gold Mines.

	Initialled by	
Southern Rhodesia	H. S. G. M. H.	H. J. S. G. M. H.
Northern Rhodesia	H. Y.	H. W. Y.
Nyasaland	H. K.	H. B. K.
Transvaal Chamber of Mines	W. G.	W. G.

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(3) Registration Act

21277/11. No. 211.

THE ANTI-SLAVERY AND ABORIGINES PROTECTION SOCIETY

to

DOMINIONS OFFICE.

[Answered by No. 212.]

Denison House, 296, Vauxhall Bridge Road, S.W.1,
7th April, 1936.

SIR,

The Committee of this Society has read with serious concern the two Native Bills which have been transmitted to the Legislative Assembly of Southern Rhodesia by His Excellency the Governor.

These Bills deal with two subjects: (1) the control of religious movements among the Natives of that Colony, and (2) new "pass" regulations.

These Bills being of a racial character are of course reserved for approval by the Secretary of State, under Article 27 (*a*) of the Rhodesian Constitution.

My Committee cannot believe that the British House of Commons would be prepared to allow these Bills to become Acts applicable to the Natives of Southern Rhodesia, for whom they have trustee responsibility, without most active opposition. It therefore seems to my Committee that any representations by the Secretary of State for the Dominions should be made at an early stage, because it would be made more difficult later on than at the present moment.

The first Bill contains what can only be described as astonishing proposals. We would draw particular attention to Articles 4 and 5. Under Article 4, wherever three or four Natives are gathered together and conduct a religious service in the presence of a fourth Native, which is either of a religious character or instruction in religion, the person conducting it will be liable to both fine and imprisonment unless he is in possession of a Certificate granted either by the Native Commissioner or a Missionary.

One of the members of my Committee has pointed out that under this Article a position of such absurdity might arise that a father, reading the Lord's Prayer to his children, without a certificate, would be liable to be fined or put into prison. It seems to us, indeed, that under this Article grave dangers to religious exercises are not only manifest, but the liberty of His Majesty's subjects is thereby imperilled.

Article 5 seems to place a premium of a substantial kind on ceremonies which take upon themselves a traditional religious character. As most of the Witch-Doctor ceremonies are associated with religious practices, the Bill seems clearly to put a premium upon Witch-Doctor practices as against the pursuit of religious services.

There is a third feature which concerns this Society less than the Missionary Societies, namely, the proposal that the certificates allowing Natives to hold such religious services are to be issued either by Missionaries or by the Chief Native Commissioner. We believe that this is placing in the hands of Missionaries duties which should not be discharged by them, and secondly that if the Bill reaches the stage of approval by the Secretary of State for the Dominions, it will almost certainly lead to complications between Missionary Societies, and perhaps even to a competition for the control of converts, which may have very unhappy results. It is, however, with the first two parts of this problem that our Society is more particularly concerned.

The second Bill to which we wish to draw attention is the issue of additional passes to Natives. The whole of this Bill imposes still further objectionable limitations upon Natives' movements. The difficulties which Natives to-day find in observing Pass Laws are notorious, and are admittedly leading to a good deal of disaffection amongst the natives, giving rise, at the same time, to anxiety in many responsible quarters in the Colonies wherever the Pass system is in operation.

In the first place, it seems to our Committee undesirable to increase the number of passes which a Native has to carry. The difficulty of his doing so was evidently present in the minds of those drafting this Bill, for under Article 19 (*a*) it would appear that eventually the practice is to be adopted of a Native carrying a book containing his passes and certificates of service, etc. Such a procedure would constitute a considerable strain upon an educated European, and could hardly fail to prove an impossible task for an uneducated Native, leading to yet further influx into the prisons of Natives sentenced for offences against Pass laws

A substantial section of the Bill is taken up with the question of Natives living in a native township, or visiting friends in that native township.

The Secretary of State will observe that it is proposed to make it an offence for any Native living in the Township to be outside the boundary of the town between 9 p.m., and 5 a.m., without a pass. Secondly, that any Native visiting the township without a pass will be liable to a penalty unless he leaves the township before 9 p.m. Thus, a Native would not be able to visit his relatives and spend the evening with them after his labours of the day were finished, without exposing himself to a fine or imprisonment.

Article 15 deals with " harbouring ". The word " harbouring " usually connotes giving refuge to a person guilty of a criminal act, but unless my Committee misinterprets this Bill, " harbouring " in this case would include any Native who is found visiting his friends after 9 o'clock at night, or sleeping in his friend's house on a visit without a permit. It seems to my Committee an astonishing proposal, for example, that a father coming from a distance and being entertained for the night by his son, should be subject to fine or imprisonment unless he carried a special permit to do so!

These are but a few of the provisions of a Bill which restrict the movements of Natives, and in fact set up a whole series of offences which normally would be regarded as healthy daily practices.

My Committee begs leave, therefore, to ask whether it is the intention of the Secretary of State to intimate at an early date that he would find himself unable to approve of the ultimate incorporation of several features in these Bills in an Act of Parliament?

I have, &c.,

JOHN HARRIS,
Secretary.

20897/44.

No. 212.

DOMINIONS OFFICE

to

ANTI-SLAVERY AND ABORIGINES PROTECTION SOCIETY.

Sir,

Downing Street, S.W.1, 11th July, 1936.

I am directed by Mr. Secretary MacDonald to state that he has been in communication with the Governor of Southern Rhodesia regarding the points raised in your letter of the 7th April* last relating to the Native Preachers and Natives Registration Bills.

2. Your Society will perhaps be aware that the Native Preachers Bill has now been withdrawn, and it is not therefore necessary to comment in detail on the points raised in your letter. It may, however, be explained that the Bill was originally prepared in consequence of a request from the Executive of the Missionary Conference of Southern Rhodesia, and that the Southern Rhodesia Advisory Board for Native Development, which consists largely of Mission representatives, passed, at a Conference in December last, a resolution accepting the principle of certificates for Native preachers and teachers. The object of the Bill was not, of course, to interfere with any genuine religion; its intention was to prevent movements subversive of law, order and decency.

3. As regards the Natives Registration Bill, this has now been passed by the Southern Rhodesia Legislative Assembly with certain amendments, and a copy of the Act, in the form in which it was passed and assented to by the Governor, is enclosed. As to the first point raised in your letter concerning Article 19 (*a*) of the Bill (section 23 (2) (*a*) of the Act), the Southern Rhodesia Government explain that the intention is gradually to substitute a more permanent form of identification certificate in order to lessen inconvenience. In the European towns where the Act will apply it will not be necessary for Natives who have entered into contracts of service to carry these identification certificates. As to the general question of the system of identification and of contracts of service, Mr. MacDonald is informed by the Southern Rhodesia Government† that a Native who has left his home feels the need of a method which establishes his identity and affords *prima facie* proof of the terms of his employment. Employers also naturally

* No. 211.

† *See* 21277/18: not printed.

benefit by the system, and without it the Government could hardly implement measures for safeguarding the interest and wellbeing of the great numbers of illiterate Natives who travel far from their homes to centres of employment.

4. It is also pointed out by the Southern Rhodesia Government that the townships to which the Act relates are in the European area and are not, therefore, Native townships, as suggested in your letter. The Act provides that Natives visiting such townships shall obtain passes. There is, however, no limit to the period for which visiting passes to the townships may be made valid, so that it would be competent to issue passes for an appropriate length of time to those Natives living outside the town who may have legitimate occasions to visit it continuously. It is further provided that the Chief Native Commissioner may exempt any Native or class of Natives from the operation of the Act, which of course includes the provision under discussion.

5. As regards the other points raised in your letter it appears to the Southern Rhodesia Government that your Society is under some misapprehension as to the conditions of Native life in the urban areas to which the Act applies. They point out that some Native domestic servants working for Europeans live on their employers' premises; many other Native workers and their families (if any) live in the Municipal locations (which are substantially Native towns). A lesser number live in private locations on farms outside the towns. Any such Native worker may move freely in the town with his wife and minor children up to 9 p.m. After that hour any Native residing within the township on his employer's premises must have his employer's written permission, if he absents himself from the premises. Similarly, a Native living in the location must have a permit signed by the Superintendent, if he wishes to absent himself between 9 p.m. and 5 a.m. He may, however, visit friends in the location between these hours. In the Salisbury location there are 4,500 men, women and children with beer-hall, recreation hall, etc., and the Bulawayo location is bigger. These restrictions have been provided for in the Southern Rhodesia law for thirty-five years. They are considered necessary to protect the inhabitants from roaming Natives who have no good reason to be there at night, and to prevent cases of trespass, etc. The policy of the Southern Rhodesia Government is to reduce the number of such cases, and it is hoped that the hostels for travelling Natives' accommodation will be of service in this connexion.

6. In conclusion, it may be stated that the Southern Rhodesia Government explain that the main objects of the Act are to safeguard Native society, especially in regard to its womenkind, and to reduce the numbers of criminal convictions of Natives which are at present unduly increased by offences for trespass, etc., and by a growing tendency among criminal and other Natives of undesirable character to crowd into the towns. It is considered that it is to the benefit of Natives, as well as Europeans, that steps should be taken to prevent undesirable Natives from entering and remaining in urban centres. It is also not less desirable to stay the influx of young women from the kraals. At present many evade parental control, and enter all too easily into an immoral life. Complaints as to non-control of this latter evil have been made at meetings of Native Boards throughout the Colony.

I am, &c.,

H. N. TAIT.

P.Q. 20897/10.

No. 213.

TELEGRAM

to

SOUTHERN RHODESIA GOVERNMENT.

(Sent 12.20 a.m., 16th July, 1936.)

[*Answered by No. 214.*]

No. 60. Confidential. I am communicating in separate telegram* text of question and answer in House of Commons on 14th July regarding section 14 (3) of Natives Registration Act. In a supplementary question Mr. Johnston asked whether this practice which is now being legalized is not a direct outcome of the compound

* P.Q. 20897/10: not printed.

system, which has been abolished in the Belgian copper mines, and whether steps would be taken to abolish what he described as " This infamous compound system, with its inevitable celibacy and the consequences which follow from it ". He further stated that he would raise matter on adjournment at early opportunity. The questioner is evidently under a misapprehension, since I understand that Natives Registration Act contemplates natives having their wives and families with them when they so desire in the native locations in townships, and that married quarters are provided. At the same time it will be appreciated that system under which Administration have apparently to extend some sort of official recognition towards concubinage is not readily understood here and I have been asked by British Commonwealth League to receive a deputation on the subject. In the circumstances I should be grateful if you would telegraph as soon as possible full information which I can use in House of Commons and when receiving deputation as to (*a*) necessity for special arrangements proposed under section 14 (3) of Act and manner in which it will be administered, (*b*) general arrangements in Native locations and justification for their existence, particularly in case of women other than wives. Notification of non-disallowance of Act was communicated to you in my despatch No. 236 of 11th July* but in the circumstances I should be glad if you could defer issue of proclamation bringing Act into force until I can communicate with you further.

20897/50. No. 214.

TELEGRAM

from

SOUTHERN RHODESIA GOVERNMENT.

(Received 9.50 a.m., 18th July, 1936.)

No. 70. Confidential. 18th July. Your telegram No. 60 confidential 16th July†.

The location system is necessary in Municipalities for reasons that there are a number of Natives employed in towns in offices and shops and similar buildings which have no living quarters. The Municipalities therefore provide accommodation for such Natives in their locations.

For proper control of locations they are put under the charge of the Superintendents who are appointed by the Municipality concerned with special approval of the Government and only Natives who can show that they have bona fide reasons for living in the township, e.g., that they are employed in, or are married to Natives who are employed in, the township, are permitted to reside in the location.

There exists amongst more or less detribalized Natives in the town a class of women who live permanently with Native men as their wives but who are not legally married to them either by Christian or Native rights. Such couples regard themselves and are regarded by other Natives as man and wife but as their marriages have not been registered the women would not be permitted to live in the locations as wives of the men concerned.

One of the objects of Section 14 (3) is to permit of those women living in locations. If exemption provided by the Section is not made the women must be treated as prostitutes and excluded from the location. They are not prostitutes but if separated from their " husbands " they soon will be. The object of the Section is to eliminate as far as possible promiscuous immorality among urban Natives and it will be administered to that end.

It must be borne in mind that Native who is by nature polygamous and whose tribal sanctions are rapidly breaking down under impact of white civilization is becoming seriously demoralized in urban centres. In the opinion of my Ministers the ultimate cure for that evil is evangelizing of the Native people and substitution of Christianity for primitive superstitution but in the meantime my Government has to deal with the situation as it is and mitigate as far as possible an already existing evil.

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* 20897/44: not printed. † No. 213.

135

20897/51. No. 215.

BRITISH COMMONWEALTH LEAGUE

to

DOMINIONS OFFICE.

[Answered by No. 216.]

SIR, 17, Buckingham Street, Adelphi, W.C.2, 29th July, 1936.

I beg to submit Memorandum on the Natives Registration Bill (Southern Rhodesia) 1936, which you asked us to prepare when you received the Deputation from the above League and its affiliated societies on 24th July.

I have, &c.

DAISY D. SOLOMON,

Hon. Secretary.

Enclosure in No. 215.

MEMORANDUM TO THE SECRETARY OF STATE FOR DOMINION AFFAIRS REGARDING LEGALIZED OR TOLERATED CONCUBINAGE UNDER THE NATIVES REGISTRATION BILL (SOUTHERN RHODESIA) 1936.

The Secretary of State for Dominion Affairs (The Rt. Hon. Malcolm MacDonald) suggested that the Deputation which he received on 24th July, 1936, from the British Commonwealth League and its affiliated societies, should send him within the week a Memorandum with constructive proposals, so that he might consider them.

We are not in a position to make constructive proposals in so short a time on the Bill itself, and the subjects with which it deals; in any case, that would be outside the scope of our immediate concern on which we sought an interview with the Secretary of State, namely, the fact that the Premier of Southern Rhodesia has stated that a certain clause of the Bill has been amended so as to provide " certain facilities " for the Native men, the bulk of whom are not legally married but live with women in the locations.

Our concern is mainly that this official toleration of and provision for concubinage appears to us to be almost indistinguishable from legalized prostitution. Moreover, as we know that many of the Native labourers are not permanently employed in the townships, there is, in some districts, a tendency for these " concubines " to pass from one man to another when the particular man with whom such a woman is living leaves her.

We therefore beg the Secretary of State to take such steps as may be necessary to ensure that:—

(1) The grant of permits to women shall not be conditional on their submission to periodic examination for venereal disease.

(2) That in no case shall permits be given to stay or reside for purposes of prostitution.

(3) Any person procuring any woman to be a concubine by force, fraud, false pretences, or threats shall be punished.

(4) Any person who makes profit by procuring women as concubines, or for any immoral purpose, or for the use of any other person shall be punished.

(5) Any township where permits are given to women to reside in locations shall appoint a person, not being the person who grants the permits, preferably a trained woman welfare officer responsible to Government, to whom the women can have access in case of need. In large townships, such as Bulawayo and Salisbury, the appointment of a trained woman welfare officer with status and authority is absolutely essential and should be compulsory.

These suggestions are not drawn in legal terms, and the sole intention of them is to prevent facilities for prostitution being officially recognized or officially tolerated, to prevent the introduction of any form of special police or medical regulation of prostitution, and also to prevent the sexual exploitation of women for purposes of gain.

We realize, however, that these proposals do not touch the main problem indicated by Dr. Huggins in his speech as Premier of Southern Rhodesia in introducing the Natives Registration Bill to the Southern Rhodesian Parliament last April. He said: " As Hon. Members know, the state of affairs in Native life produced by white civilization is really shocking. The bulk of these boys in the location are not legitimately married, either under their marriage customs or under Christian rites. It is quite

impossible to keep these Natives in the proximity of our towns, unless certain facilities are provided . . . . . " The Premier's proposal is to recognize and give facilities for concubinage, but we suggest that what is of primary and urgent importance is to give facilities for a settled family life for Native men and women.

We do not only mean that married men should be encouraged to bring their wives with them to the township locations, but that there should be a real, effective and consistently pursued endeavour to provide an environment for the African Native population engaged in labour in or around the townships, which will make a decent and responsible community and family life possible.

We are impressed with the fact that industrialization has changed the whole aspect of life for many thousands of Africans, and that a new life must be built up for them, and they themselves assisted to adapt themselves to a new and difficult environment. To base this necessarily new life on concubinage and prostitution, as being easier and cheaper to arrange for them than responsible marriage would be, we believe, a fatal and short-sighted policy which would have most unfortunate repercussions, not only on the Native people but on the future prosperity, welfare and good government of the whole population.

These considerations are, we are aware, outside the direct scope of this Bill, but they arise out of it, and therefore we beg the Secretary of State not only to insist that there shall be no attempt directly or indirectly to introduce any form of regulated prostitution in Southern Rhodesia, but to press for facilities being arranged for a settled community and family life for the Native people.

We do very earnestly beg the Secretary of State to withhold his assent to the Bill until assurances have been received from the Southern Rhodesian Government that the above Points 1–8 will be accepted. Also, that he will appoint a Commission to enquire into the extent, development and social and economic causes of prostitution amongst African women, and the reasons for the proposed introduction of legalized concubinage instead of settled marriage, which concubinage, taking into consideration the conditions of Native labour in Southern Rhodesia, appears to contain elements capable of developing into something closely akin to legalized prostitution.

20897/79. No. 216.

DOMINIONS OFFICE

to

BRITISH COMMONWEALTH LEAGUE.

(Confidential.)

MADAM, Downing Street, S.W.1, 16th November, 1936.

I have now heard from the Prime Minister of Southern Rhodesia, to whom I sent a copy of the memorandum on the Natives Registration Act enclosed in your letter of the 29th July*.

I should explain in the first place that it is not in any way disputed that conditions of native life in the European towns in Southern Rhodesia call for improvement, but I think that the fears which have been expressed as to the effect of the Natives Registration Act in this respect have been based on some misunderstanding of the intentions of the Southern Rhodesia Government. The aim of the Southern Rhodesia Government is, in fact, to secure the improvement of the conditions of native life in the towns, and I am assured that it is their belief that the Act will assist in realizing that aim. In this connexion I enclose a copy of a letter addressed by the Secretary for Native Affairs, after discussions with the mayors of the larger towns, to the authorities of all the municipalities affected by the Act, setting out the policy which the Southern Rhodesia Government wish to be carried out under it.

Mr. Huggins has authorized me to communicate a copy of the letter to you, but I must ask you to keep its actual text confidential, since it has not yet been published in Southern Rhodesia. It will be seen that the objectives outlined in this letter are similar to those suggested in the memorandum from the League, and that in particular the local authorities have been asked to act in accordance with the first two points made in the League's memorandum. Mr. Huggins has explained to me that existing Southern Rhodesian legislation, in particular, Ordinance No. 13 of 1900, already covers the intention of the third and fourth points in the memorandum. As regards the fifth point,

* No. 215.

I am informed that there is a trained woman Welfare Officer in the Bulawayo Location, who works under the auspices of the Native Welfare Society, her salary being jointly provided by the Government and the Municipality; there is also a female Native Home Demonstrator paid by the Government, and a male Native Orderly paid by the Native Welfare Society. In Salisbury Location there are two nurses (one certified C.M.B.) employed jointly by the Government and the Municipality, and all medicines are supplied free of charge. In all there are now six Native Welfare Societies in the larger centres and their work is supported and subsidized by the Government.

As regards the further question with which you deal in the latter part of the memorandum regarding the provision of facilities for settled family life for the Natives in the towns, you will appreciate that Native men are encouraged to bring their wives and families to live with them in the locations. In addition, I may mention that the Governor-in-Council is empowered, under Section 29 of the Land Appropriation Act, 1930, to set up village settlements in the vicinity of towns and other centres where large numbers of Natives are employed. Such a village settlement has already been constructed at Luveve, near Bulawayo with well built cottages, and it is hoped that if this venture proves a success other similar settlements may be set up elsewhere in due course. It is felt that these endeavours are a promising line of approach to the problem and that they will do much towards providing the Native labourer with an environment in which he can lead a decent and responsible community and family life.

The Native Welfare Societies mentioned above have also begun to take in hand the provision of recreational facilities and efforts are being made to extend the Pathfinder and Wayfarer movements in the Native schools. Such developments will, it is hoped, contribute to a healthy outlook among the rising generation.

I hope that in view of the above explanations the League will agree that the difficult problems connected with Native life in the urban locations are receiving the very careful and sympathetic consideration of the Southern Rhodesian authorities.

Yours, &c.,

MALCOLM MACDONALD.

TRADE

(1) Agreement with the Union of South Africa

10059/57 No. 217.

DESPATCH

from

SOUTHERN RHODESIA GOVERNMENT.

(Received 4th March, 1935.)

(No. 43. Confidential.)

SIR, Salisbury, 22nd February, 1935.

I have the honour to enclose an extract from to-day's issue of the Southern Rhodesia Government Gazette* containing the text of the Trade Agreement recently concluded between the Governments of the Union of South Africa and Southern Rhodesia.

2. You will observe that this instrument, unlike the instruments which previously regulated the fiscal relations between the two countries, is not a Customs Agreement, and that, when it comes into force on the 1st April, Southern Rhodesia will pass out of the Customs Union of which it has hitherto been a member.

3. The refusal of the Union Government to remove, or even to relax, the restrictions which, for the economic protection of its own farmers, it had imposed upon the access of Southern Rhodesian cattle and tobacco to its markets was the principal cause of this new departure. I have reason to believe that, when Mr. Havenga made it clear at the beginning of the discussions at Cape Town that Southern Rhodesia could hope only to participate in such share in the markets of the Union as could not be supplied by Union

* Not printed.

producers, my Prime Minister was disposed to break off negotiations forthwith, but that he decided to continue them in the hope (eventually fulfilled) of securing the retention of some outlet for Southern Rhodesian cattle and meat into the Union. He appears to have gathered the impression that the intransigent attitude of the Union Ministers was due to political considerations, and that they were not prepared to antagonize their cattle and tobacco farmers for the sake of commercial and manufacturing interests of the Union or for the sake of maintaining fiscal unity in Southern Africa.

4. On this basis the negotiation of a new Customs Agreement became impossible, and recourse was had to the alternative arrangement of a Trade Agreement. Even this did not prove easy of achievement, but the difficulties were surmounted, and the final result is regarded by my Minister of Finance as reasonably satisfactory, indeed as more satisfactory than he had anticipated. When the conclusion of an acceptable Agreement was in sight, my Prime Minister returned to Salisbury, leaving his two colleagues, the Ministers of Finance and Agriculture, and their advisers to complete the detailed arrangements.

5. Your attention has, doubtless, been called to a statement made by Mr. Havenga in the Union Parliament on the 18th February, upon the receipt of telegraphic advice that I had signed the Agreement on behalf of my Government. No such statement has been made as yet by Ministers here. I assume that they are awaiting the meeting of the Southern Rhodesia Parliament, which has been summoned to begin its session on the 11th March. This despatch should not be understood as forecasting in any way what Ministers may wish to say about the negotiations and the Agreement. It merely reflects my personal impressions. You will notice that the Agreement is subject to ratification and confirmation by the Parliaments of both contracting parties.

6. Although the Union is to receive valuable preferences in the markets of this Colony, there would seem to be nothing to prevent my Government from according to the United Kingdom and other members of the Commonwealth a more generous measure of preference than was possible under the provisions of the Customs Agreement. In other words, Southern Rhodesia will have greater freedom than hitherto for the negotiation of mutually advantageous arrangements with other exporting and importing countries.

7. Article IX of the Agreement provides for the exclusion (subject to modification by special permit) of trade between the two countries in certain specified commodities, such (*inter alia*) as wheat, maize, potatoes, eggs, butter and cheese. There has been, I believe, considerable "dumping" from time to time of potatoes and eggs from the Union into this Colony, and I should anticipate that the provisions of this particular Article would in the long run prove more beneficial to the farmers of Southern Rhodesia than to the farmers of the Union.

8. The importation of slaughter cattle from Southern Rhodesia into the Union is to be limited to an annual total of 5,200 head. The present weight embargo is maintained, but the Southern Rhodesia cattle farmer receives some little compensation for the reduction in the exportable number of cattle by the provision that the Union Control Board may permit a proportionate number of chilled or frozen quarters of beef from animals of the prescribed embargo weight to be substituted for live cattle. This should enable some export to be maintained when veterinary restrictions are imposed on the admission of live cattle.

9. The present duty-free import quota of 2,000,000 pounds weight of Virginian type leaf tobacco from Southern Rhodesia into the Union is preserved for another twelve months (viz., up to the 30th June, 1936) but is subject to the requirement of a minimum purchase price of one shilling per pound free on rail Salisbury. After the 30th June, 1936, the Southern Rhodesian exporter will share only in any portion of the consumption in the Union which is not supplied by Union producers. This probably means that the Union Government is determined to compel its nationals to smoke, so far as possible, nothing but Union tobacco, irrespective of quality. A similar arrangement applies to Turkish leaf tobacco from Southern Rhodesia, the maximum quota until the 30th June, 1936, to be 200,000 pounds weight. During the same period 150,000 pounds weight of Union leaf tobacco may be imported free of duty into Southern Rhodesia.

10. Article XIII provides that goods partially manufactured in the Territory of either party shall not be deemed to have been manufactured therein unless at least 50 per cent of the factory cost was represented by the products and labour of the Territory or of any part of His Majesty's dominions: in motor vehicles the percentage is to be 25, and in respect of other goods the parties may agree to reduce the percentage from 50 to not less than 25.

11. Mutually advantageous Railway rates are provided for.

12. Article X contains provisions of which the importance to Southern Rhodesian merchants has not yet been noticed by the Press. It relates to re-exports. The effect is that re-exports from the Union will be liable here to Customs duty computed upon the free on rail value in the Union, inclusive therefore of the Union merchant's profit. This will be likely to encourage direct importation from oversea by Southern Rhodesian merchants, and as the rebates of duty applicable to wholesale transactions will hardly be recoverable on importations of small retail purchases, the tendency will probably be to transfer much of the present mail order business of the large Johannesburg stores to local retailers in this Colony.

13. I do not find in the Agreement any provision for the imposition of dumping duties. I am not sure at the moment whether this omission was deliberate or due to an oversight.

14. So far as I can judge, the general effect of the Cape Town negotiations upon the minds of my Ministers has been to render any policy of closer political union with the South even less attractive to them than it was before.

I have, &c.,

H. J. STANLEY,

Governor.

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(2) Customs Agreement with Northern Rhodesia regarding the movement of primary produce

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10059/65

No. 218.

DESPATCH

from

SOUTHERN RHODESIA GOVERNMENT.

(Received 14th October, 1935.)

(No. 289. Confidential.)

SIR, Salisbury, 8th October, 1935.

I have the honour to report that about six months ago a despatch, dated the 25th March, was received from the Governor of Northern Rhodesia raising the question of the percentage payments provided for in the Customs Agreements between Southern Rhodesia and Northern Rhodesia and between Northern Rhodesia and the Union of South Africa in respect of local manufactures exported from one country to the other.

2. These payments, which were fixed at 12 per centum and 6 per centum in accordance with the tariff classification, are intended to compensate the importing country for the loss of revenue it sustains by reason of the local manufactures of the other country being imported without payment of Customs duty.

3. The Governor of Northern Rhodesia stated that an examination of the trade figures between Southern Rhodesia and Northern Rhodesia for the nine months ended on the 30th September, 1934, revealed that duty at preferential tariff rates would have yielded to Northern Rhodesia *ad valorem* percentages of 17·1 and (excluding tobacco manufactures) 8·95 respectively. He stated also that examination of the figures of trade between Northern Rhodesia and the Union of South Africa for 1934 showed that in that case the percentages necessary fully to compensate Northern Rhodesia revenue would be 16·9 and 13·9 per centum, and that it had been suggested to the Union Government that it would be a reasonable compromise if the rates of payment of 15 per centum and 10 per centum were substituted for the existing rates. He suggested, therefore, subject to the Union Government accepting his proposals, that this Government might be prepared to agree to a similar adjustment.

4. In the same despatch the Governor of Northern Rhodesia proposed, with a view to protecting primary producers in either Territory and at the same time to avoiding the imposition of Customs duties on products passing between the two countries, that the marketing of primary products between the two countries should be arranged so far as possible by mutual agreement between the co-operative and other interests concerned.

In order to provide the necessary legal sanction, he suggested that the two Governments should take power to prohibit, restrict or regulate the import and export of primary produce by order published in the Government Gazette.

5. In a later despatch, dated the 30th April, the Governor of Northern Rhodesia informed me that the Union Government had agreed to substitute the figures 15 per centum and 10 per centum for the figures 12 per centum and 6 per centum provided in Article IX of their Agreement with Northern Rhodesia.

6. On the 23rd July I addressed, in conformity with Ministerial advice, a despatch to the Governor of Northern Rhodesia to the effect that, although examination of the trade figures for the whole of 1934 revealed that the percentage payments required fully to compensate for the amount which would have been collected under British preferential tariff rates by Northern Rhodesia for that year were, as he had stated, approximately 17·1 per centum and 8·95 per centum, my Ministers were of the opinion that there were certain other factors to be taken into consideration.

7. My Ministers had pointed out that, although the payments for the year on Class I at 12 per centum to Northern Rhodesia amounted to £6,063 and the Northern Rhodesia Administration would have collected £8,600 under its British preferential tariff, the significance of these figures was somewhat altered if consideration were given to the items flour and maize which were included in the calculations.

8. In the case of flour Northern Rhodesia received from Southern Rhodesia £2,418 whereas at British preferential tariff rates £4,193 would have been collected. But Southern Rhodesia had increased its tariff to 4*s.* 6*d.* per 100 lb. in order to secure a fixed price for the wheat growers, and Southern Rhodesia was importing wheat from Northern Rhodesia free of duty and therefore extending to the Northern Rhodesia growers the benefit of the protective tariff. Northern Rhodesia had also increased the tariff on flour, presumably from the same motives. My Ministers suggested, therefore, that the figures based on the existing tariff were fictitious, and that Northern Rhodesia might fairly have regard rather to the amount they would have received under the former duty of 2*s.* 3*d.* per 100 lb. and might halve the estimate of receipts at tariff rates accordingly.

9. In the case of maize, I was advised that Southern Rhodesia paid to Northern Rhodesia £415 in respect of maize meal which at tariff rates would have yielded £935 to the Northern Rhodesia Administration. But Southern Rhodesia had exported to Northern Rhodesia just under one million pounds of maize meal and had imported from that country 1,120,000 pounds of maize free of duty. In effect, therefore, Southern Rhodesia had ground maize from Northern Rhodesia, had returned it to that Territory and had paid for the trade 12 per centum on the value of the meal.

10. In regard to the payments at 6 per centum, I informed him that my Ministers considered that due weight might be given to the circumstance that during 1934 this Colony had imported from Northern Rhodesia 105,843 lb. of leaf tobacco on which nothing was received and had exported 101,830 lb. of manufactured tobacco on which we had paid over (at 6 per centum *ad valorem*) £3,072.

11. With regard to the suggested arrangements for marketing primary produce between the two Territories, I indicated that, while agreeing that excessive competition was undesirable, my Ministers were of opinion that farmers in Northern Rhodesia enjoyed a fairly substantial measure of protection in the form of railage charges, and I added that they thought the imposition of further restrictive measures undesirable, if it could be avoided.

12. In his reply the Governor of Northern Rhodesia said that the figures which he had quoted had been based on a hypothetical formula and were not open to the realistic examination to which they had been subjected in my despatch. He presumed that, if the present agreement were abrogated, it would be replaced by another which, in view of the existing trade relations, he thought would probably prove to be more favourable than the present agreement to the financial interests of Northern Rhodesia. He quoted figures to show that in the first five months of 1935 the exports of local produce from Northern Rhodesia to Southern Rhodesia were 2·5 per centum of the imports from Southern Rhodesia, whereas similar exports to the Union were 21·9 per centum of the imports from that Dominion. From the figures which he had quoted the Governor concluded that as Southern Rhodesia had an overwhelming advantage in the matter of the trade balance, it was not unreasonable for Northern Rhodesia to have some advantage in the matter of revenue and to expect as good treatment from Southern Rhodesia as was received from the Union. He indicated that, should this Government be unable to

accede to his request, the matter would be one for negotiation between representatives of the two Territories, though he hoped that such negotiations would take place without the formality of giving notice to retire from the existing agreement.

13. The Governor of Northern Rhodesia concluded his despatch by stating that it was not his desire to impose further restrictions on the movements of primary produce but to alter the method of restriction. He was of the opinion that the method which he had proposed would be more prompt and more elastic than the procedure contemplated in Article VII of the present Agreement.

14. I have informed the Governor of Northern Rhodesia, by despatch dated the 1st October, that my Ministers, bearing in mind the incidence of the trade in wheat, maize meal and tobacco, were still unconvinced that any increase in payments was justified, but that they were prepared to agree to increase the payments in respect of Classes on which 6 per centum had been paid to 9 per centum, with effect from the 1st April, 1935.

15. My Ministers are still considering Sir Hubert Young's proposals with regard to the regulation of the imports and exports of primary produce.

16. I will keep you informed of any further developments.

I have, &c.,

H. J. STANLEY,

Governor.

10059/67

No. 219.

DESPATCH

from

SOUTHERN RHODESIA GOVERNMENT.

(Received 28th December, 1935.)

(No. 357. Confidential.)

Salisbury, 17th December, 1935.

SIR,

With further reference to my Confidential despatch No. 289 of the 5th October* on the subject of the Customs Agreements between Southern Rhodesia and Northern Rhodesia and between Northern Rhodesia and the Union of South Africa, I have the honour to report that, in a despatch dated the 9th November, the Governor of Northern Rhodesia informed me that he noted that this Government was prepared to increase the payments for which provision is made in the Customs Agreement between Southern Rhodesia and Northern Rhodesia to 9 per centum in respect of the classes of goods on which 6 per centum had hitherto been paid, and he agreed that, having regard to the figures for 1934, the rate of 9 per centum on those classes would be reasonable.

2. With regard to the classes of goods on which the rate of payment is 12 per centum, Sir Hubert Young was unable to accept the arguments put forward by my Ministers. He reiterated that, in his opinion it was questionable whether an arrangement reached on a purely hypothetical basis could reasonably be analysed in regard to particular commodities and he found it difficult to justify lower percentages in the agreement with Southern Rhodesia than those which the agreement with the Union of South Africa provided. Sir Hubert Young stated, however, that, in view of the relations which exist between the two Governments, he was not disposed to press the matter further.

3. I informed the Governor of Northern Rhodesia, in a despatch dated the 7th December, that my Ministers would give effect to the increased rate of payment, proposed in my despatch of the 1st October, in respect of the financial year ending on the 31st March, 1936, and I invited him, on behalf of my Ministers, to send representatives to a conference in Salisbury to discuss the question of the regulation by permit of the importation of primary produce into either territory from the other. No reply to that despatch has as yet been received.

I have, &c.,

H. J. STANLEY,

Governor.

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* No. 218.

10059/69.

No. 220.

DESPATCH

from

SOUTHERN RHODESIA GOVERNMENT.

(Received 30th March, 1936.)

(No. 108. Confidential.)

SIR, Salisbury, 21st March, 1936.

With reference to my Confidential despatch No. 357 of the 17th December, 1935*, I have the honour to report that a Conference between representatives of the Governments of Northern and Southern Rhodesia was held in Salisbury during February last to discuss the regulation by permit of imports of primary produce as between the two territories.

2. I enclose for your information a copy of a Memorandum of Agreement between the participants in that Conference and a copy of a despatch which I have addressed to the Governor of Northern Rhodesia. You will observe that my Ministers approve of the adoption of the agreement, and that a signification of the approval of the Government of Northern Rhodesia has been invited.

I have, &c.,

H. J. STANLEY,

Governor.

Enclosure 1 in No. 220.

MEMORANDUM OF AGREEMENT BETWEEN REPRESENTATIVES OF THE GOVERNMENTS OF SOUTHERN AND NORTHERN RHODESIA REGARDING MOVEMENTS OF PRIMARY PRODUCE.

Present:

Southern Rhodesia:—

THE HON. J. H. SMIT, *Minister of Finance and Commerce.*
S. M. SYMONS, *Controller of Customs.*
E. R. JACKLIN, *Director of Trade and Industry.*
H. G. MUNDY, *Secretary, Department of Agriculture and Lands.*
A. R. BURNETT-HURST, *Government Statistician.*

Northern Rhodesia:—

C. R. LOCKHART, *Treasurer.*
C. J. LEWIN, *Director of Agriculture.*
J. P. A. MORRIS, *Director of Veterinary Services.*

1. It has been accepted in principle by both parties that either Government is entitled, in consultation with the other, to restrict importations of agricultural and pastoral products in the interests of primary producers.

2. The Northern Rhodesia Government possesses, and the Conference understands that the Southern Rhodesian Government will shortly acquire, power to regulate imports and exports by Government order. It is agreed that regulation by permit should be adopted after consultation between the two Governments when regulation is necessary and that Article VII should be deleted from the Customs Agreement.

It is further agreed that both Governments should endeavour to promote such mutual agreements between the trade and producing interests concerned as will render Government regulation unnecessary.

3. It is agreed that any restrictions on importation which may be imposed by either Government shall be imposed in such a manner as to safeguard the trade of either party as compared with other territories with which trade or customs agreements exist or may be made.

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* No. 219.

4. With regard to specific products:—

Cattle. It is agreed that the restrictions on the removal of slaughter cattle from Southern to Northern Rhodesia which expired in June, 1935, shall continue on the same terms. In the event of importation into Northern Rhodesia of slaughter cattle becoming necessary the number required shall be allotted equally between Southern Rhodesia and the Bechuanaland Protectorate.

Maize. It is agreed that maize and maize products shall not be removed from one territory to the other except by agreement between the respective Maize Control Boards or between the Maize Control Board of one territory and the Government of the other.

Wheat and Wheat Flour, Butter, Bacon, Pigs, Potatoes. The position regarding these commodities was discussed by the Conference. It was agreed that no restrictions shall be imposed on removals of these products at present.

In the event of Southern Rhodesia applying an official grading system to locally produced pigs, such grading system shall be applied to pigs imported from Northern Rhodesia.

Tobacco. It is agreed that the importations of leaf tobacco free of duty into Southern Rhodesia from Northern Rhodesia during the year ending the 30th June, 1937, shall be restricted to 200,000 lb., and thereafter during each year ended the 30th June to a quantity not exceeding the exports of manufactured tobacco from Southern Rhodesia to Northern Rhodesia during the preceding calendar year plus ten per centum. It is agreed that import permits in this regard shall be issued to the manufacturers by the Southern Rhodesia Government.

It is further agreed that this agreement includes the undertaking of the United Tobacco Company to purchase Northern Rhodesia leaf tobacco on the terms agreed upon in 1933 and is dependent on the continuance of that undertaking.

It is agreed that the agreements set out above are subsidiary to the Customs Agreement and shall terminate on the termination of that agreement.

It is further agreed that either party is at liberty to reopen negotiations regarding any primary products in the event of any change in the present position either generally or in relation to any particular products.

The agreements of the Conference are subject to confirmation by an exchange of despatches between the respective Governments.

Sgd. J. H. SMIT,
Minister of Finance and Commerce, South Rhodesia.
Sgd. C. R. LOCKHART,
Treasurer, Northern Rhodesia.

15th February, 1936.

Enclosure 2 in No. 220.

(No. 530.)

SIR, Salisbury, 21st March, 1936.

With reference to your Deputy's telegram No. 133 of the 8th February on the subject of the Conference held here on and after the 13th February between representatives of the Governments of Northern Rhodesia and Southern Rhodesia to discuss the regulation by permit of imports of primary produce as between the two territories, I have the honour, at the instance of my Ministers, to forward to Your Excellency a copy of the Memorandum of Agreement signed by my Minister of Finance and Your Excellency's Treasurer on the 15th February.

2. The Government of Southern Rhodesia approves of the adoption of this Agreement, and my Ministers suggest that, in the event of Your Excellency's approval of it, it should, on receipt of a despatch from you in that sense, be considered to have been confirmed by your Government and mine.

I have, &c.,

H. J. STANLEY,
Governor.

His Excellency
The Governor of Northern Rhodesia,
Lusaka.

10059/71.

No. 221.

DESPATCH

from

SOUTHERN RHODESIA GOVERNMENT.

(Received 10th August, 1936.)

(No. 362. Confidential.)

SIR, Salisbury, 1st August, 1936.

With regard to the reference to Northern Rhodesian leaf tobacco in my despatch No. 361 of to-day*, I have the honour to refer to my despatch, No. 108, Confidential, of the 21st March†, and to attach copies of subsequent correspondence with the Governor of Northern Rhodesia.

I have, &c.,

H. J. STANLEY,

Governor.

Enclosure 1 in No. 221.

(No. CU/B/12/1.) Government House, Northern Rhodesia.

SIR, 7th April, 1936.

I have the honour to refer to Your Excellency's despatch No. 530, dated the 21st March, 1936, transmitting a copy of the Memorandum of Agreement regarding movements of primary produce.

2. The Government of Northern Rhodesia approves of the adoption of the Agreement signed by Your Excellency's Minister of Finance and Commerce and by the Treasurer of Northern Rhodesia on the 15th February, 1936, a copy of which accompanied your despatch under reference.

3. I would suggest, however, that the wording of clause "3" and clause "4, *Cattle*" might take the following form and I shall be glad to learn whether Your Excellency's Ministers agree to the suggested re-draft of these clauses:—

"3. It is agreed that any restrictions on importations which may be imposed by the Government of either territory shall be imposed in such a manner as to safeguard the trade of the other territory as compared with that of any other territories with which trade or customs agreements exist or may be made".

"4. *Cattle.* It is agreed that the restrictions on the removal of slaughter cattle from Southern to Northern Rhodesia under the Agreement which expired in June, 1935, shall continue on the same terms. Any permits for the importation into Northern Rhodesia of slaughter cattle which may be granted under this Agreement shall be allotted equally between Southern Rhodesia and the Bechuanaland Protectorate".

The adoption of the Agreement by our respective Governments will necessitate the deletion of Article VII from the Customs Agreement, and I suggest that this should be effected by an exchange of Notes.

I have, &c.,

HUBERT YOUNG,

Governor.

His Excellency
The Governor of Southern Rhodesia,
Salisbury.

Enclosure 2 in No. 221.

(No. 1160/11/36.)

SIR, Salisbury, 20th June, 1936.

With reference to Your Excellency's despatch No. CU/B/12/1 of the 7th April, on the subject of the Memorandum of Agreement regarding movements of primary produce, I have the honour to inform you that my Ministers agree to the re-draft of clauses 3 and 4 of that Memorandum, as suggested by you.

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* 9287 A/38: not printed. † No. 220.

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END

2. My Ministers agree, also, to omit Article VII of the Customs Agreement between Northern Rhodesia and Southern Rhodesia and that that omission should be effected by an exchange of Notes.

I have, &c.,

H. J. STANLEY,

Governor.

His Excellency
The Governor of Northern Rhodesia,
Lusaka.

Enclosure 3 in No. 221.

(No. CU/B/12/1.)

SIR, Government House, Northern Rhodesia, 7th July, 1936.

I have the honour to refer to Your Excellency's despatch No. 1160/11/36 of the 20th June, 1936, on the subject of the Memorandum of Agreement regarding movements of primary produce, and to note that Your Excellency's Ministers have agreed to the re-draft of clauses 3 and 4 of that Memorandum as suggested in my despatch, No. CU/B/12/1, of the 7th April, 1936.

2. In accordance with clause 2 of the aforementioned Agreement, I now confirm that this Government agrees to the deletion of Article VII from the Southern Rhodesia-Northern Rhodesia Customs Agreement, and that this despatch and Your Excellency's reply in similar terms will be regarded as giving effect to the arrangements concluded between the two Governments.

I have, &c.,

HUBERT YOUNG,

Governor.

His Excellency
The Governor of Southern Rhodesia,
Salisbury.

Enclosure 4 in No. 221.

(No. 1449/11/36.)

SIR, Salisbury, 30th July, 1936.

I have the honour to confirm the despatch to Your Excellency, yesterday, of my telegram No. 10 as follows:—

"Your despatch CU/B/12/1 of the 7th July Memorandum of Agreement regarding Movements of primary produce. My Ministers ask me to inform Your Excellency by telegram that they note that Your Excellency's Government agrees, in accordance with Clause 2 of that Memorandum of Agreement, to the omission of Article VII from the Southern Rhodesia-Northern Rhodesia Customs Agreement and that your despatch under reference and this reply will be regarded as giving effect to the arrangements concluded between our two Governments".

I have, &c.,

H. J. STANLEY,

Governor.

His Excellency
The Governor of Northern Rhodesia,
Lusaka.

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